SUMMARY OF SIGNIFICANT CTA DECISIONS (AUGUST 2017)

1. ***The defense of lack of authority of the revenue officers may be considered if raised during trial. In the instant case, the taxpayer was able to raise the matter during the cross examination.***

The taxpayer was assessed with several deficiency taxes. It raised as a defense, among others, the lack of authority of the revenue officers who conducted the audit. The revenue officer named in the Letter of Authority (LOA) was eventually transferred. The Revenue Officers who replaced the original officer were not issued a new LOA, but were merely given a Memorandum of Assignment. The CTA First Division, in its initial decision, refused to consider the argument as the same was not raised in the Petition for Review.

The Court in an Amended Decision reversed itself and ruled that the assessment is void since the examiners who conducted the examination were not armed with a valid LOA. The Court also cited the Supreme Court Ruling in the *Medicard* case, where the SC ruled that the question of authority may be considered if raised during the trial. In the instant case, the taxpayer was able to raise the matter during the cross examination of Group Supervisor Lumagui.

As regards the authority of the revenue officers who continued the audit, the Court ruled that the Tax Code requires the issuance of an LOA. Further, RMO 43-90 specifically mandates the issuance of a new LOA in case of transfers. Thus, there being no new LOA, the revenue officers who continued the audit were without authority. The assessment is therefore void.

Splash Corporation v. Commissioner of Internal Revenue, CTA Case No. 8483 August 18, 2017

2. ***Decision of a Revenue District Officer in claims for VAT refund may be elevated to the CTA.***

The taxpayer filed a claim for refund of its unutilized input VAT in relation to its zero-rated sales. It filed its administrative claim for refund within the two year prescriptive period. The Revenue District Officer (RDO) issued a letter denying the said claim on the ground that the taxpayer failed to deduct the amount of claim in its vat return. This prompted the taxpayer to file a Motion for Reconsideration (MR) on the said denial. In the said MR, the taxpayer attached the vat return where it deducted the input vat that is subject of the claim for refund. The taxpayer counted the 120 day period for the BIR to decide the claim for refund, from its filing of the MR and submission of the vat return showing the deduction of the input vat.

The court ruled that it has no jurisdiction over the case, due to the taxpayer's failure to comply with the 120-30 day rule. The court ruled that the taxpayer should have counted the 30 days from its receipt of the denial by the RDO. The fact that it submitted additional documents in its MR is of no moment. The additional documents submitted were also included in the taxpayer's administrative claim. As such, the submission made in its MR is actually a mere resubmission of documents. Thus, the counting of the 120 days commenced upon its filing of the administrative claim, and not upon its submission of additional documents along with the MR.

Emerson Electric (Asia) Limited – ROHQ v. Commissioner of Internal Revenue, CTA Case No. 8768, August 03, 2017

3. ***Regardless of whether actual documents of the taxpayer were examined or not, an LOA must be duly issued to the revenue officers who are conducting the audit.***

The taxpayer was assessed with various deficiency taxes. The taxpayer alleged that there was no Letter of Authority (LOA) issued to the revenue officers. Only a Memorandum of Assignment (MOA) was issued as their authority to examine. The BIR insists that there was no need to issue an LOA for the investigation since there was no need to examine documents. The assessment was based on a purely legal issue.

The Court stressed the importance of the issuance of an LOA. It applied the Supreme Court (SC) decision in the *Medicard* case, where the SC ruled that regardless of whether actual documents of the taxpayer were examined or not, an LOA must be duly issued to the revenue officers who are conducting the audit. Without a valid LOA authorizing such officers, the assessment is void.

EDS Manufacturing Inc. v. Commissioner of Internal Revenue, CTA EB No. 1493, June 01, 2017

4. **ERC Registration is a requirement to prove zero rating of renewable energy companies.**

The taxpayer is claiming for a refund of its input VAT incurred in relation to its zero-rated sales. The taxpayer claims that its sales of power generated through renewable sources are subject to VAT zero-rating.

The Court ruled that the taxpayer failed to prove that it is a renewable energy generating company. Particularly, the Court noted that it did not submit its Energy Regulatory Commission (ERC) Registration to prove the same. The Court did not consider the Certificate of Endorsement from the Department of Energy, since the same explicitly states that the VAT zero rating is conditioned upon compliance with ERC requirements. As such, the taxpayer failed to prove that it is entitled to VAT zero-rating and consequently to vat refund.

Hedcor Sibulan Inc. v. Commissioner of Internal Revenue, CTA Case No. 8014 August 05, 2017

5. ***An RE developer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are zero-rated. It should not have paid input taxes on the same.***

In this case, although the taxpayer was able to prove that it is engaged in zero-rated sales, specifically, the sale of power generated through renewable sources of energy, it was not able to prove that input taxes is refundable. The taxpayer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are zero-rated. It should not have paid input taxes on its purchases of goods and services from vat-registered suppliers because such purchases were zero-rated. Accordingly, no input tax should have been shifted or passed on to the taxpayer.

The taxpayer's recourse for its purchases of goods and services, where it paid vat, is not a claim for refund against the BIR, but to seek reimbursement of its alleged input vat paid from its suppliers of goods and services since its purchases of local goods, properties and services needed for the development, construction and installation of the plant facilities as well as its purchases of goods, properties and services for the whole process of exploration and development of renewable energy sources up to its conversion into power, including but not limited to the services performed by subcontractors or contractors, are subject to zero percent VAT.

Hedcor Sibulan, Inc. vs. CIR, CTA Case No. 8990, August 1, 2017

6. ***The 10 year prescriptive period will not apply if there is only a mistake in the application of the law as to when a final withholding tax must be filed and paid.***

During a special meeting of the Board of Directors on December 22, 2006, the Board declared a cash dividend in favor of the stockholders of record as of March 31, 2016, payable on or before January 31, 2007. The taxpayer paid the cash dividends to its stockholders on February 2, 2007. It then filed its Monthly Remittance Form of Final Income Taxes Withheld (Form No. 1601-F) on March 10, 2007. It likewise paid the FWT on March 10, 2007, but was only confirmed only on March 12, 2007.

The taxpayer received a PAN dated January 9, 2013, assessing it for penalties in connection with the supposed late payment of the FWT on cash dividends. On February 27, 2013, it received the Assessment Notice with FLD reiterating the assessment in the PAN.

As regards the issue on prescription, the court ruled that the assessment has prescribed. In this case, clearly more than three years have elapsed from the filing of the return (March 10, 2007) to the issuance of the PAN (January 28, 2013) and FLD (February 27, 2013).

As to the presence of falsity or fraud with intent to evade the FWT or penalties, the court in division found that the return was false due to the fact that it declared in its FWT Return the dividends payment as a February transaction instead of January (since it was declared that the cash dividends were payable on or before January 31, 2007). Pursuant to Section 2.57.4 of RR 2-98, the FWT return and FWT due should have been filed and paid on or before February 10, 2007.

However, the Court En Banc disagrees with the Division's findings. According to the Court En Banc, the act of considering the cash dividends as income payments for the month of February (instead of January) and paying the withholding tax due only on March 10, 2007 (instead of February, 2007) was a mistake, but such mistake is not considered as a falsity which would trigger the operation of the 10-year prescriptive period. First, there was no design to mislead or deceive on the part of the taxpayer, since the mistake in filing arose from the taxpayer's mistake in applying RR 2-98 with respect to the period when to withhold the FWT. Second, there was no intentional non-disclosure or omission so as to put the BIR at a disadvantage in the investigation since the BIR was not prevented from issuing the deficiency assessment within the general 3-year prescriptive period. Finally, there was no fraudulent intent or willful intent to evade the payment of the correct amount of tax, or the penalties and interest.

CIR vs. Hoya Glass Disc Philippines, Inc. (CTA EB No. 1524 & 1529, August 16, 2017)

7. ***Neither the law nor the implementing regulations provide that in a claim for refund of input VAT that there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid.***

The taxpayer purchased September 2012 from Cebu Light Industrial Park, Inc. 5 parcels of land in Lapu-Lapu City that is located inside the PEZA Zone. The taxpayer thereafter executed a Contract of Lease with Knowles Electronics (Philippines) involving the 5 parcels of land on January 2013.

Knowles Electronics is an entity registered with the PEZA and a qualified enterprise for the purpose of VAT zero-rating of its transactions with its local suppliers of goods, properties and services. The taxpayer filed an administrative claim for refund on its purchase of the 5 parcels of land. The CTA Division granted the refund, hence this appeal.

The CTA En Banc dismissed the Petition of the BIR. The court ruled that in a claim for refund of input VAT that there be zero-rated or effectively zero-rated transactions at the time the claimed input VAT was incurred or paid. Neither does it provide that the input tax in the purchase of land be refunded only when it was sold or input tax thereon be apportioned to the period of lease. Neither does the law nor the implementing regulations provide that the option to carry over to the succeeding quarters any unutilized input tax or to file a claim for refund and availing of an option precludes choosing that of the other.

What the law and the implementing regulations provide is that the taxpayer who has zero-rated or effectively zero-rated transactions were allowed to apply for the issuance of a tax credit certificate or a tax refund for input taxes paid, in addition to the option to carry forward the input taxes against future output tax liabilities.

In the case at bar, it is immaterial that there are no reported zero-rated sale for 2012 when the purchase of land was made, as long as the input tax in relation thereto has not been applied against output tax.

CIR vs. KEP (PHILIPPINES) Realty Corporation (CTA EB No. 1504, August 18, 2017)

8. ***The ONETT Computation Sheet is not the assessment contemplated under Section 228 of the NIRC that would require a protest from the taxpayer and that the CTA can take jurisdiction of.***

The taxpayer was the highest bidder in a public auction of a real property and was issued a Certificate of Sale which was registered and annotated on the title. After the period to redeem the subject property expired, Landbank went to the BIR to pay the corresponding Expanded Withholding Tax (EWT) and Documentary Stamp Tax (DST) for the purpose of consolidating the title in its name.

However, the BIR assessed the taxpayer for surcharges, interests and penalties for the alleged late payment per the ONETT Computation Sheet. The taxpayer paid the imposition to avoid additional penalties. It sent a letter to the Regional Director of the BIR, protesting the imposition of the surcharges, interests, and penalties. The protest was denied. The taxpayer elevated the denial to the CIR by way of a Motion for Reconsideration/Appeal on the Denial of Protest. Due to the alleged inaction, the taxpayer elevated the case via a Petition for Review with the CTA Division.

The Court ruled that the ONETT Computation Sheet is not the assessment contemplated under Section 228 of the NIRC that would require a protest from the taxpayer. An Assessment informs the taxpayer that he or she has tax liabilities, but not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments. Assessments contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period.

Moreover, it is clear that instead of filing an administrative claim for refund under Section 229 of the NIRC, the taxpayer filed a letter-protest pursuant to Section 228, questioning the imposition of the surcharges, interests and penalties, which is the wrong remedy.

Land Bank of the Philippines vs. CIR (CTA EB No. 1462, August 1, 2017)

9. ***In order to render a tax return made by a taxpayer to be a 'false return', there must appear a design to mislead or deceive on the part of the taxpayer, or at least culpable negligence. A mistake, not culpable in respect of its value would not constitute a false return.***

The taxpayer seeks for the revocation of the Collection Notice on the ground that it did not receive any notice of assessment and that the period to assess by the BIR has prescribed. On the other hand, the BIR claims that the prescriptive period should be ten (10) years as the case involves a substantial under-declaration of income, amounting to falsity or fraud on the taxpayer's part.

The Court ruled that if the taxpayer denies having received an assessment from the BIR, it then becomes incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee. In this case, records show that the BIR presented the corresponding Registry Receipts to prove that the PAN and the Assessment Notices were issued and served to the taxpayer at his registered business address, through registered mail. Thus, the BIR was able to prove receipt of the PAN and the FAN, despite the taxpayer's denial.

Further, in order to render a tax return made by a taxpayer to be a 'false return', there must appear a design to mislead or deceive on the part of the taxpayer, or at least culpable negligence. A mistake, not culpable in respect of its value would not constitute a false return.

In the taxpayer's Final/Amended Annual ITR for taxable year 2006, there was no amount stated in the total sales. However, a scrutiny of said ITR would reveal that the Net Income, Taxable Income, and Tax Due declared were in accordance with the financial statements submitted by the taxpayer. Hence, there is no substantial under-declaration and/or fraud to speak of, and so Section 203 of the NIRC of 1997, as amended, will apply and the prescriptive period of three years will govern.

Records show that the taxpayer filed his Final/Amended ITR for the year 2006 on June 12, 2007; thus, BIR had until June 12, 2010 to issue the FAN. The BIR admitted that it only sent the PAN on December 28, 2010 and the FAN on January 24, 2011, which are beyond the prescriptive period.

Villanueva, Jr. vs. CIR. (CTA Case No. 8935; August 18, 2017

10. R.A. No. 8791 is contemplating a scenario where the mortgagor is a juridical person and the mortgagee, who would foreclose the subject property, is a bank. However, the BSP is not considered a bank.

BF Towns Corp., as accommodation mortgagor; BFSMB, as borrower-bank; and the taxpayer, as mortgagee, entered into a real estate mortgage (REM) where a property registered under the name of BF Town was used as collateral. The mortgaged property was foreclosed with the taxpayer as the purchaser; and the Certificate of Sale was registered on December 20, 2011. On April 23, 2012, the taxpayer paid the capital gains tax due on the sale; applying the one (1) year redemption period under Act No. 3135, claiming that it is not considered a bank under the laws.

However, the BIR assessed the taxpayer for surcharges, interest, and compromise penalty (penalties); applying the three month redemption period under R.A. No. 8791. The BIR considered BSP as a bank. The taxpayer now contests the alleged penalties, contending that it had paid the taxes on time.

The Court ruled that R.A. No. 8791 is contemplating a scenario where the mortgagor is a juridical person and the mortgagee, who would foreclose the subject property, is a bank.

However, the taxpayer is not considered a bank under the law and jurisprudence. R.A. No. 8791 defines and classifies banks which does not include the BSP. There is no showing that it is engaged in the lending of funds obtained in the form of deposits and collects interest and charges as commission; and that it falls under any of the banks as classified.

Correspondingly, the period of redemption under Section 47 of R.A. No. 8791 is not applicable to the subject transaction. Rather, it is the one-year period of redemption under Section 6 of Act No. 3135, as amended by Act No. 4118, which must be applied thereto.

Considering that the subject Certificate of Sale was registered on December 20, 2011, the period of redemption ends only on December 20, 2012. From the expiration of the said redemption period, petitioner has thirty (30) days, or until January 19, 2013, within which to file the Capital Gains Tax Return and remit the capital gains tax due. In view of petitioner's timely payment of the capital gains tax due on April 23, 2012, way ahead of the January 19, 2013 deadline, the taxpayer should not be held liable for penalties for the alleged late payment of tax. Thus, since the taxpayer paid for the erroneously assessed penalties, it is entitled to a tax refund.

BSP vs. CIR, CTA Case No. 9010; August 18, 2017

11. Income Tax Return cannot be used as basis in counting the three year prescriptive period for franchise tax assessment.

The BIR issued the Final Assessment Notice (FAN) for deficiency Franchise Tax and Compromise Penalty. The taxpayer now assails the assessments and the penalties imposed claiming that the period to assess the taxpayer has expired.

The Court ruled that the taxpayer filed only its income tax return but not a franchise tax return; and the assessment notice attached to the FAN pertains to a deficiency franchise tax instead of income tax. On franchise taxes, NIRC provides that quarterly returns shall be filed and paid twenty-five (25) days after the end of each taxable quarter. Since the BIR only discovered the non-payment/non-filing of franchise tax return by the taxpayer only on September 7, 2007 when the latter submitted its books of accounts, the 10-year prescriptive period and not the 3-year period to assess will apply.

Hence, when the BIR issued the assailed FAN on February 26, 2008 or about four years after its payment of income tax due, the period of limitation has not yet prescribed. Besides, what is being assessed is not income tax but rather, franchise tax.

As regards compromise penalty, for it to be imposed, the taxpayer should agree or consent to such imposition and the absence of such agreement renders such compromise penalty unauthorized and illegal. If the offer is rejected by the taxpayer, BIR cannot enforce it except through a criminal action. In this case, there was neither consent on the part of the petitioner nor indication of willingness to pay said compromise penalty during the period of BIR investigation nor at the trial before the CTA. Hence, the imposition of compromise penalty was unauthorized and illegal.

Calumpit Water District vs. CIR, CTA Case No. 9493, August 12, 2017

12. *An amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.*

The taxpayer is a PEZA registered company that exported nickel cobalt mixed sulfide to SMM (Japanese company), which qualifies as VAT zero-rated sales. It has incurred and paid VAT input taxes from its purchases. It filed an application for tax refund which the CTA Division partially granted.

Both the taxpayer and the BIR filed their respective Motions for Reconsideration. The CTA Division then rendered the assailed Amended Decision, which denied the BIR's Motion for Reconsideration and partially granted the taxpayer's Motion for Partial Reconsideration. Thereafter, both parties filed their respective Petition for Review with the CTA En banc.

The Court ruled that in order for the Court 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 that issued the assailed decision or resolution. Failure to do so is a ground for the dismissal of the appeal as the word 'must' indicates that the filing of a prior motion is mandatory and not merely directory.

The same is true in the case of an amended decision. The rules of the CTA defines an amended decision as any action modifying or reversing a decision of the Court En Banc or in Division. An amended decision is a different decision, and thus, is a proper subject of a motion for reconsideration.

In the instant cases, both parties failed to file their respective motions for reconsideration of the Amended Decision dated October 11, 2016. Thus, applying the Supreme Court ruling in the Asiatrust case, the Court ruled that it has no recourse but to dismiss the parties' respective Petitions for Review as the assailed Amended Decision has already attained finality.

- DISSENTING OPINION of Justice Del Rosario

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), I submit that 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. Thus, it is only the party adversely affected by the assailed Amended Decision that should seek a reconsideration thereof. Here, considering that the assailed Amended Decision already granted albeit partially the CIR's motion, it is procedurally improper for him to file another Motion for Reconsideration of the assailed Amended Decision, which, in essence, would be in the nature of a prohibited second motion.

- DISSENTING OPINION of Justice RINGPIS-LIBAN:

In the case of Asiatrust, a formal hearing was held which became the foundation of the amended decision in Asiatrust. Therefore, it is only proper that the Commissioner of Internal Revenue in Asiatrust file a motion for reconsideration to the amended decision as to the findings made by the Court in division during the hearing. In this case of Coral Bay, no hearing was set nor additional evidence presented for the resolution of the parties' motions for reconsiderations. Hence, I am of the humble opinion that Asiatrust does not apply in this case, and that outright dismissals of the consolidated Petitions for Review are unwarranted.

CIR vs. Coral Bay Nickel Corporation (CTA EB No. 1543) & Coral Bay Nickel Corporation vs. CIR (CTA EB No. 1546)

13. To be entitled to the exemption of a non-stock, non-profit educational institution as provided in the Constitution, the taxpayer should have shown that all its income have been used actually and exclusively for educational purpose.

The taxpayer is a non-stock, non profit educational institution as evidenced by Amended Articles of Incorporation and New By-Laws. To be entitled to the exemption of a non-stock, non-profit educational institution as provided in the Constitution, the taxpayer should have shown that all its income have been used actually and exclusively for educational purpose. However, as shown by the records, the donation and rental income mentioned in the Financial Statements (FS) of the taxpayer have no breakdown as to its components. Thus, the Court said that it could not really trace if the subject donation and the taxpayer’s earnings from the use of facilities and rental income have, indeed, formed part of the so-called "General Fund" of the taxpayer’s FS, which was allegedly used to defray the expenses it incurred.

The taxpayer is also liable for VAT because it merely insisted that the ICPA had already confirmed the veracity and authenticity of its registration as non VAT taxpayer, without submitting the original for comparison. However, the Rules of the Court of Tax Appeals provides that findings and conclusions of the ICPA may be challenged by the parties and shall not be conclusive upon the Court which may, in whole or in part, adopt such findings and conclusion subject to verification. CTA Rules also provides that when the parties stipulate that a commissioner's findings of fact shall be final, only questions of law shall thereafter be considered. In the instant case, there was no such stipulation by the parties, the court-commissioned ICPA was not even mentioned in the Joint Stipulation of Facts and Issues that was filed.

Further, the taxpayer cannot avail of either the 40% standard deduction under the NIRC or of the 10% preferential income tax rate being given to proprietary educational institutions. Petitioner, being a non-stock, non-profit education institution, is generally a tax-exempt entity. Thus, it should not have been taxed on income received by them as such, provided it has complied with the requisites under the constitution.

Lastly simultaneous deficiency and delinquency interests are allowed by law and equity. The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition.

CIR vs. De La Salle Lipa, Inc. (CTA EB No. 1424) & De La Salle Lipa, Inc., vs. CIR (CTA EB No. 1430)

14. ***The two-year prescriptive period for filing an administrative claim for refund or issuance of tax credit certificate begins to run from the close of the taxable quarter, "when the relevant sales were made", not from the time the input VAT was incurred.***

The taxpayer is a registered Renewable Energy Developer. On 2013, the taxpayer filed with the BIR its administrative claims for refund for the alleged unutilized VAT input taxes incurred in 2011. An examination of the quarterly VAT Returns filed for taxable year 2011 reveals that the taxpayer had no sales declared during the said period. In addition, taxpayer's manager, Mr. Helenio Seraspi confirmed that the taxpayer had no sales during the taxable year 2011 and had only started selling during the first quarter of 2014.

The Court ruled that in order to be entitled to a refund of excess input VAT attributable to zero-rated sales, the input VAT being refunded must be attributable to the zero-rated or effectively zero-rated sales of the taxpayer and that the two-year prescriptive period for filing an administrative claim for refund or issuance of tax credit certificate begins to run from the close of the taxable quarter, "when the relevant sales were made", not from the time the input VAT was incurred.

The Court finds that the taxpayer's claim for refund that was filed with the BIR in year 2013 was prematurely filed since the two-year prescriptive period for filing an administrative claim for refund or issuance of tax credit certificate begins to run from the close of the taxable quarter, "when the relevant sales were made", not from the time the input VAT was incurred. In this case, the two year period must be counted from its first sale on year 2014. Also, the judicial claims, which are the subject of the Petition for Review cannot be given due course since there was no zero-rated or effectively zero-rated sales during the subject periods.

Maibarara Geothermal Inc., vs CIR (CTA Case nos., 8699, 8732, 8771 and 8811; August 18, 2017)

15. ***Since there is no input VAT that should be paid by the taxpayer on the zero-rated purchases, it necessarily follows that they are not entitled to refund or issuance of tax credit certificate from the said purchases of goods and services.***

The taxpayer is a renewable energy company. It filed its administrative claims for refund for unutilized VAT input taxes for the year 2012

The Court agreed with the taxpayer that the sale of power generated through renewable sources of energy is among the transactions subject to zero percent VAT under Section 108 (B)(7) of the NIRC of 1997. Thus, the taxpayer's purchases of local supply of goods, properties and services needed for the development, construction and installation of its plant facilities are subject to zero percent VAT, since the taxpayer is a registered RE Developer of Geothermal Energy Resources, hence, no output VAT shall be shifted to or passed on to the RE Developer.

Therefore, no input VAT shall be paid by the RE Developer from said purchases. Since there is no input VAT that should be paid by the taxpayer on the zero-rated purchases, it necessarily follows that they are not entitled to refund or issuance of tax credit certificate from the said purchases of goods and services.

The Court held that even though an indirect tax like VAT is allowed to be shifted to the buyer, the reporting and remittance of the VAT paid to the BIR remained with the seller. Thus, even assuming, that the taxpayer paid the input VAT on its purchases which are subject to zero-percent, the supplier/seller is still the proper party to claim for the tax refund, and not the taxpayer.

Maibarara Geothermal Inc., vs CIR (CTA Case nos., 8871, 8937, 8999, & 9042; August 02, 2017)

16. ***The unused input tax of a dissolved corporation, as of the date of the merger or consolidation, shall be absorbed by the surviving or new corporation.***

The court held that the unused input tax of a dissolved corporation, as of the date of the merger or consolidation, shall be absorbed by the surviving or new corporation.

Also, Section 80 of Batas Pambansa Blg. 68 provides that a merger shall have the effect of ipso jure transferring all the rights and properties of the absorbed corporation to the surviving corporation.

Consequently, the unused input tax credits of Mytel were absorbed by or ipso jure transferred to the taxpayer from the effectivity date of the merger. Hence, the assessment disallowing the unused input tax of the absorbed corporation is not proper and the same should be cancelled.

Moreover, any tax benefit derived by the taxpayer from such carry-over redounds to the succeeding period; thus at most, the taxpayer may only be assessed in the succeeding period.

My Solid Technologies & Devices Corporation vs CIR (CTA Case No. 8854; August 04, 2017)

17. ***An assessment that is made beyond the 3 year prescriptive period is void.***

The Court held that the government can assess internal revenue taxes within three (3) years from the last day prescribed by law for the filing of tax return, or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is invalid and ineffective.

In this case, the taxpayer filed its Income Tax Return (ITR) for fiscal year 2006-2007 on October 13, 2007. Since the taxpayer's fiscal year ended on June 30, 2007, the last day to file its ITR for that year was October 15, 2007. Hence, counting three years from the taxpayer's last day to file the ITR, the BIR had until October 14, 2010 to issue the assessment. However, the taxpayer received the FAN only on April 11, 2014 which is clearly beyond the prescriptive period given to assess. Considering that the assessment was made beyond the prescriptive period, the assessment is void.

Norkis Trading Company, Inc. vs CIR, CTA Case No. 8862, August 16, 2017

18. ***RMC 90-2012 is an administrative rule with the force of law. Hence it cannot be attacked collaterally.***

San Mig Light (bottle) is subject to an excise tax of 15php per liter, and the San Mig Light (can) is subject to 20.57php per liter. However, RMC No. 90-2012 subjected both to 20.57php excise tax. To remove the products from the breweries, San Miguel paid the excise tax due. It then filed its administrative claim for refund and collaterally attacked RMC No. 90-2012.

A collateral attack on a presumably valid law is not allowed. The constitutionality or validity of laws, orders or such other rules with the force of law cannot be attacked collaterally. In the case at bar, the Court cannot determine petitioner's entitlement to a tax refund or tax credit without going into the validity of RMC No. 90-2012.

While RMC's are issuances that publish pertinent and applicable portions, as well as amplifications of laws, rules, regulations and precedents issued by the BIR and other agencies/offices, it must be determined what kind of issuance RMC No. 90-2012 so it can be determined if it can be attacked collaterally, to wit:

a. A legislative rule, which is subordinate legislation; or

b. An Interpretative rule, which is for enforcement guidelines of an administrative agency

In the case at bar, RA 10351 imposes an excise tax at 15php/liter if the net retail price per liter of volume capacity is 50.60php or less, and 20php/liter if the net retail price per liter of volume capacity is more than 50.60php per liter.

Based on the foregoing, the RMC 90-2012 is an administrative rule with the force of law. Hence it cannot be attacked collaterally.

San Miguel Brewery, Inc v. CIR, CTA Case No. 8955, August 18, 2017

The taxpayer was assessed for deficiency Documentary Stamp Tax (DST) for the year 2009, consisting of surcharge, interests and compromise penalties. The taxpayer questions the validity of the assessment and the surcharges.

19. ***A FAN with no demand for payment is void.***

The Court ruled that the assessment is void. A close perusal of the FAN reveals that both failed to demand payment of the surcharge, interest and compromise penalty mentioned therein within a specific period.

While the FAN specifically states that the taxpayer is requested to pay its aforesaid deficiency surcharge and interest through the duly authorized agent bank in which the taxpayer is enrolled within the time shown in the enclosed assessment notice, the due date in the enclosed FAN was conspicuously left blank.

In Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, the Supreme Court emphasized the requirement for an assessment to contain a specific demand for payment within a prescribed period thus:

"An assessment contains not only a computation of tax liabilities, but also <u>a demand for payment within a prescribed period.</u> 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… To start with, an assessment must be sent to and received by a taxpayer, and must demand payment of the taxes described therein within a specific period…"

Saturn Holdings, Inc. v. CIR, CTA Case No. 9085, August 18, 2017

20. A waiver is valid if both the BIR and the taxpayer are in pari delicto.

The taxpayer filed a Petition for Review before the CTA for the cancellation and setting aside of the assessment by the BIR for alleged deficiency income tax, VAT, and EWT. The taxpayer questioned the validity of the waivers since the same were signed by its President and General Manager who is allegedly not authorized to sign for lack of specific Board Resolution. It also alleged that the waivers failed to specify the kind and amount of taxes.

The Court ruled that the parties were *in pari delicto*. The taxpayer, despite a defective waiver failed to assail the same in its letter protest. In the same vein, it is using the defective waivers to avoid tax liability when the consequences therefor were not in its favor. On the part of the BIR, it failed to determine whether the waivers complied with RMO 20-90 and RDAO 05-01 and follow the procedure dictated therein. The taxpayer was found liable to pay the deficiency income tax, VAT, and EWT plus interests, surcharges, and penalties.

Telstar Marketing Corporation V. CIR, CTA Case No. 8900, August 18, 2017

21. Simultaneous receipt of the PAN and the FAN by the taxpayer renders the assessment void.

The taxpayer filed a Petition for Review seeking to lift, invalidate, and annul the Warrant of Garnishment and Final Assessment Notice by the BIR for deficiency taxes. The taxpayer questioned the validity of the assessment for failure to observe due process. The BIR, on the other hand, questioned the jurisdiction of the CTA.

The Court ruled that the assessments are void for failure to comply with due process. As testified to by the taxpayer's witnesses and undisputed by the BIR's witnesses, the taxpayer simultaneously received the PAN dated December 27, 2013 and the FAN dated January 14, 2014 on January 7, 2014. Clearly, the FAN was issued and received prior to the lapse of the 15-day period given to the taxpayer to respond to the PAN. This is a denial of petitioner's right to due process. As such, the FAN is void.

Travel Warehouse vs. CIR, CTA Case No. 9103