BDB Law wts

DU-BALADAD AND ASSOCIATES

SUMMARY OF SIGNIFICANT CTA DECISIONS (DECEMBER 2017)

1. **The 80% of the enrollment fee ear marked for the members' medical and hospitalization expenses do not form part of gross receipts.**

The taxpayer, engaged in business as an HMO, was assessed with deficiency VAT. The BIR found that only 20% of the enrollment fees received by the taxpayer are reported as part of its gross receipts for tax purposes. The BIR then assessed the remaining 80% as subject to VAT. The taxpayer argued that the 80% of the enrollment fee are earmarked for medical/hospitalization expenses of its members. As such, it should not form part of its VATable gross receipts. The CTA ruled in favor of the taxpayer, applying a recent decision of the Supreme Court which resolved the issue in favor of the HMO taxpayer.

The case was remanded to the CTA Division to determine the "earmarking". Medicard has to prove that 80% earmarking of the enrollment fees and the subsequent payment to the medical service providers. *(Maxicare v. Commissioner of Internal Revenue, CTA EB No. 1312, December 26, 2017)*

2. **Lack of a definite date of demand renders an assessment void.**

The taxpayer was assessed with various deficiency taxes. However, the assessment notices for the deficiency taxes were not served. After raising the matter before the CTA, the Court ruled that the assessment by the BIR was void for lack of definite date of demand. In the said assessment, the Formal Letter of Demand (FLD) stated that the due date for the payment of the alleged deficiency taxes are indicated in the respective assessment notices. However, the assessment notices in question were not served to the taxpayer. Thus, the CTA ruled that the assessment lacked a definite date of demand, and is therefore void. *(LYK Property Holdings v. Commissioner of Internal Revenue, CTA Case No. 9066, December 23, 2017)*

3. **RMC No. 31-2013 (setting guidelines for the taxation of ADB Employees) do not apply retroactively.**

The taxpayers, local employees of the Asia Development Bank (ADB), seek the refund of income taxes paid for taxable year 2012, pursuant to the enforcement of RMC No. 31-2013. The taxpayers challenged the validity of the issuance, and was able to secure a favorable ruling in the RTC level. While the said ruling was elevated by the BIR, the taxpayers filed their respective refunds. The CTA ruled that since the decision has yet to attain finality, it is not yet binding. Further, it ruled that as resident citizens, the ADB employees are subject to income tax. However, since the RMC was only enacted in 2013, it cannot be given retroactive application, as the same would unduly prejudice the taxpayers. *(Aguilar, et al. v. Commissioner of Internal Revenue, CTA Case No. 9073, December 1, 2017)*

4. **The sound discretion of the Court prevails in deciding Creditable Withholding Tax refund cases.**

The taxpayer sought the refund of its unutilized excess creditable withholding taxes. The BIR argues that the taxpayer failed to submit complete documents to support its claim, thus the claim should be denied. The CTA, however, ruled that cases brought before it are litigated de novo, and that it has full discretion to decide which pieces of evidence to accept, and whether or not the submitted evidence is sufficient to establish a taxpayer's entitlement to refund. *(Commissioner of Internal Revenue v. Honda Cars Makati, CTA EB No. 1464, December 4, 2017)*

5. **Dividends received by holding companies are not subject to Local Business Tax (LBT).**

Davao City assessed the taxpayer with deficiency LBT on the dividends received from San Miguel Corporation. The taxpayer argues that dividend income is not subject to LBT. The City argues that the taxpayer can be considered as a non-bank financial institution, whose dividend income may be subjected to LBT under the Local Government Code (LGC). The CTA ruled in favor of the taxpayer, concluding that the City failed to prove that the taxpayer is a non-bank financial intermediary. As such, the taxpayer's dividend income may not be subjected to LBT. *(Fernandez Holdings v. City of Davao, CTA EB No. 1531, December 5, 2018)*

6. **An office located outside a particular Local Government Unit (LGU) is considered as a branch office and not a mere extension.**

The Cities of Calamba and Makati are claiming the Local Business Taxes (LGU) paid by Fuji-Hayan. The RTC in Calamba ruled that only the city of Calamba is entitled to the LBT of Fuji-Hayan. The CTA reversed the ruling of the RTC, finding that the office in Makati is effectively a branch since it acts an activity hub for Fuji-Hayan within the area.

The administrative, executive, engineering and accounting departments of Fuhi-Hayan, as well as its books of accounts are in the Makati office; and that the performance of some of its activities such as signing of contracts, payroll, invoicing, collections, and purchasing, are done in the Makati office.

There was also a stipulation by the parties that the Makati office is a branch office.

(City of Makati v. City of Calamba, CTA AC No. 167, December 11, 2017)

7. **The BIR has five years from the issuance of the Formal Letter of Demand/Final Assessment Notice (FLD/FAN) to commence collection proceedings.**

The taxpayer was issued a FLD/FAN for alleged deficiency franchise tax. However the BIR failed to institute any collection procedures within five years from the issuance of the FLD/FAN. The CTA ruled that the BIR should have acted within the five year period. Failing to do so, the right to collect the alleged deficiency taxes has already prescribed. *(Calumpit Water District V. Commissioner of Internal Revenue, CTA EB No. 1446, December 19, 2017)*

8. **The non-submission of quarterly income tax returns (ITR) are not fatal to the claim for excess creditable withholding tax refund.**

The claim for refund of excess creditable withholding tax filed by the taxpayer was denied by the BIR. The BIR claims that for failure to submit its quarterly ITRs, the taxpayer failed to prove that it did not carry over the excess creditable withholding tax being refunded. The CTA ruled that the presentation of the quarterly ITRs is not necessary to prove non-carry over. The same fact may be established through other pieces of evidence. *(Commissioner of Internal Revenue v. Jardine Lloyd Thompson Insurance Brokers, CTA EB No. 1177, December 12, 2017)*

9. **The mere presentation of the Registry Return Receipt is not enough proof of the service and receipt of the thing mailed, as it must be properly authenticated to serve as proof for the receipt.**

The taxpayer was assessed with various deficiency taxes. It claims that it did not receive the Formal Letter of Demand/Final Assessment Notice (FLD/FAN). The BIR argues that it was able to mail the same to the taxpayer, as evidenced by registry receipts. The CTA, however, ruled that the said registry receipts must also be validated in order for it to hold weight. The BIR failed to identify the signatory in the registry receipt card, as well as proof that the said person is also duly authorized to receive mail matter for the taxpayer.

It was addressed to Feati University, Inc. - not referring to any actual person. The failure of the taxpayer to promptly respond to the BIR's FAN was caused by its failure to ensure the proper labelling or addressing of the envelope with the correct and authorized addressee.

Mr. Macatangay, the Administrative Aide III of the Administrative Division of the BIR Manila, identified the Registry Receipt Card. However, as admitted by M . Macatangay during the cross examination, he did not see who really signed and accepted the return card. Furthermore, the BIR failed to show that the person who signed the Registry Return Receipt is the taxpayer's authorized agent. *(Feati University v. Commissioner of Internal Revenue, CTA Case No. 7965, December 13, 2017)*

10. **The term "VAT-Zero rated" need not be printed on the face of the receipt/invoice. It is sufficient that the same be indicated clearly on the face of the receipt/invoice.**

The BIR denied the VAT refund claim of the taxpayer, for failure to comply with the rules. The BIR contends that the taxpayer failed to print the words "VAT-zero rated" on the face of its receipts. The CTA found that the words "VAT-zero rated" were stamped on the documents, and that such indication is sufficient compliance with the rules. *(Commissioner of Internal Revenue v. Philippine Gold Processing & Refining Corporation, CTA EB No. 1460, December 7, 2017)*