SUMMARY OF SIGNIFICANT CTA DECISIONS (JULY 2017)

1. There is a need for litigants to specify in their appeal briefs the errors alleged to have been committed by the lower court. A general assignment of errors is unacceptable under the rules.

The taxpayer applied for a refund for its alleged excess input VAT which was partially granted by the CTA in Division. The BIR appealed and claims that it was not shown that the sales invoices and/or ORs have fully complied with the substantiation requirements, particularly in the stating of information in VAT invoice or official receipt. Manulife then argues that the evidence has been comprehensively and completely evaluated in the assailed decision and so the BIR's argument that the CTA in Division erred in partially granting the present claim without substantiation should be rejected.

The Court ruled that the BIR did not specify in its appeal which of the VAT invoices and/or receipts are not compliant with the substantiation requirements. In a previous case, it was already emphasized that there is a need for litigants to specify in their appeal briefs the errors alleged to have been committed by the lower court in order to enable the reviewing court and the opposing party to see on what points appellant or plaintiff in error intends to ask a reversal of the judgment or decree, and to limit discussion to those points. A general assignment of errors is unacceptable under the rules.

Commissioner of Internal Revenue v. Manulife Data Services, Inc., CTA EB No. 1547, July 05, 2017

2. RMC 31-2013 must not be applied retroactively.

This case is a consolidation of the various claims for refund of alleged erroneous/illegal payment of income taxes on the compensation income of several Filipino employees of the Asian Development Bank (ADB) during the period 2012 and 2013.

The CTA partially grants the Petition. According to the court, it is clear from the ADB Charter that the Republic of the Philippines retains its right to tax the salaries and emoluments paid by the bank to citizens or nationals of the Philippines as clarified by RMC 31-2013. But the said RMC must not be applied retroactively. Thus, the BIR is ordered to refund in favor of petitioners, the illegally collected income taxes for taxable year 2012.

Rowena Vicente et al., v. Commissioner of Internal Revenue, CTA Case No. 9096, July 7, 2017

3. ***In case of personal service, it is required that the designation and authority to act for and in behalf of the taxpayer is shown, if acknowledged received by a person other than the taxpayer himself. In case of service through registered mail, it must be sent to the taxpayer, not to any other person. But any other person can bind the taxpayer in receiving the FAN by registered mail, either by acquiescence or through estoppel.***

The taxpayer alleges that it was denied due process because it did not receive any Final Assessment Notice (FAN) and that the assessments for Income Tax, VAT, Expanded Withholding Tax, Compromise Penalty, and Interest have prescribed.

The FAN was personally served to a certain Freddie Masula. It was also sent by registered mail and was received by Irene Masula. The taxpayer alleges that such receipts were invalid. Both are not officers of the corporation.

As regards the issue on valid service of notice, the court said that Revenue Regulation 12-99 states that personal service must be made to the taxpayer himself or his duly authorized representative.

The receipt by Freddie Masula is invalid because no statement regarding his designation and authority to act for and in behalf of the taxpayer was mentioned. However, as regards Irene's receipt, records show that she has received the Preliminary Assessment Notice (PAN) where the taxpayer was able to protest subsequently thereafter. Thus, Irene Masula has authority to bind the taxpayer in receiving the FAN by registered mail, either by acquiescence or through estoppel.

As regards the defense of prescription, although if based on the findings of the court, the taxpayer would have been partially favored with certain periods of the assessment, the court nevertheless ruled that since the taxpayer has not shown as to which portion of the assessments pertain to the prescribed periods, the Court treated all of the subject tax assessments as not to have prescribed.

Factory Automation and Instrumentation v. Commissioner of Internal Revenue, CTA Case No. 1335, July 7, 2017

4. ***Regardless of whether or not the tax liabilities pertain to delinquent accounts, the taxpayer may still be covered by the Tax Amnesty under RA No. 9480.***

The taxpayer seeks reconsideration of the Decision, dismissing his petition for review for lack of jurisdiction on the ground that he has already availed of Tax Amnesty pursuant to RA 9480.

The court ruled that regardless of whether or not the tax liabilities pertain to delinquent accounts, the taxpayer may still be covered by the Tax Amnesty under RA No. 9480 and its implementing rules.

Moreover, the one-year period provided under Section 4 of RA No. 9480 had already lapsed, without anyone challenging the correctness of the taxpayer's SALN. Thus, the same continues to bear the presumption of correctness as provided for under RA No. 9480. Considering all the foregoing, the taxpayer must be able to enjoy the immunities provided for by the said law.

Alexander C. Crisostomo v. Commissioner of Internal Revenue, CTA Case No. 8672, July 7, 2017

5. ***PGI's lease of gaming machines and rendition of technical services to PAGCOR and PAGCOR-Authorized Bingo Operators quality for the VAT zero-ratin.***

The BIR alleges that PAGCOR's tax exemption cannot extend to Perception Gaming, Inc. (PGI) because it is not an entity dealing or contracting directly with PAGCOR, but only with PAGCOR authorized Bingo Operators. Therefore, its lease of gaming equipment to PAGCOR Operators is not subject to vat zero rating.

The court ruled that based on the PAGCOR Charter, three entities shall enjoy exemption from taxes:

1. PAGCOR
2. Corporations with whom PAGCOR or Operator has any contractual relationship in connection with the operations of the casinos under the PAGCOR Charter
3. Those receiving compensation or other remuneration from the PAGCOR or Operator as a result of essential facilities furnished and/or technical services rendered to PAGCOR.

Considering that PAGCOR, its Authorized Bingo Operators and other entities providing facilities and rendering services to PAGCOR and authorized Bingo Operators are exempt from VAT under the PAGCOR Charter, it follows that the services rendered to PAGCOR or its authorized Bingo Operators are also subject to 0% VAT.

Thus, PGI's lease of gaming machines and rendition of technical services to PAGCOR and PAGCOR-Authorized Bingo Operators quality for the VAT zero-rating; but only those substantiated by official receipts.

Perception Gaming, Inc. v. Commissioner of Internal Revenue, CTA Case No. 8509, July 7, 2017

6. ***In order for the CTA En Banc to take cognizance of an appeal via a petition for review, a timely MR or MNT must first be filed with the CTA Division that issued an amended decision.***

Fort Bonifacio Development Corporation (FBDC) was found to be liable to various tax deficiencies by the BIR. Both parties filed a Motion for Reconsideration. Subsequently, an amended Decision was promulgated by the court. The CTA Third Division denied CIR's Motion for Partial Reconsideration for lack of merit and partially granted FBDC's Motion for Partial Reconsideration. Dissatisfied, both parties appealed to the CTA En Banc.

The CTA En Banc dismissed both petitions. According to the court, both parties directly filed Petitions for Review without filing a prior Motion for Reconsideration (MR) or Motion for New Trial (MNT). Due to this procedural lapse, the Amended Decision has attained finality. The court also cited the Asiatrust case, wherein the Supreme Court pronounced that in order for the CTA En Banc to take cognizance of an appeal via a petition for review, a timely MR or MNT must first be filed with the CTA Division that issued the assailed decision or resolution and that failure to file such is a ground for the dismissal of its Petition for Review.

Commissioner of Internal Revenue v. Fort Bonifacio Development Corp., CTA EB No. 1410, July 11, 2017

7. ***Withholding of creditable withholding tax shall not apply to income payments made to the National Government and its instrumentalities, including provincial, city or municipal governments and barangays.***

The Iligan Diesel Power Plants were formerly owned by Northern Mindanao Power Corporation (NMPC)/National Power Corporation (NPC). The City assessed NMPC with real property taxes (RPT). However, NMPC did not ay the RPT, but instead contested the assessment on the ground that it is exempt from RPT. During the pendency of the appeal, the City issued Warrants of Levy on the Iligan Diesel Power Plants. The City auctioned the Iligan Diesel Power Plants at the tax delinquency sale of NMPC properties. However, the City was unsuccessful in trying to sell the Iligan Diesel Power Plants at a public auction. As a consequence, the City bought the properties. Since NMPC failed to redeem the property within one year from the sale, the ownership of the Iligan Diesel Power Plants was vested to the City. Petitioner avers that considering the City could not operate the Iligan Diesel Power Plants, the City resolved to sell the same at a public action but the bidding failed. The taxpayer approached the City Mayor, and offered to purchase the Iligan Diesel Power Plants from the City for a price of P300,000,000.00 which eventually pushed through.

The BIR assessed the taxpayer of expanded withholding tax. But according to the court, withholding of creditable withholding tax shall not apply to income payments made to the National Government and its instrumentalities, including provincial, city or municipal governments and barangays. In the present case, there is no question that the sale of other real property was made by the City Government of Iligan. Income payments made to the City Government of Iligan is exempt from the payment of creditable withholding tax. Consequently, the taxpayer is not liable to the deficiency EWT assessed by the BIR on its income payments made to the City Government of Iligan.

Conal Holdings Corporation v. Commissioner of Internal Revenue, CTA Case No.9099, July 17, 2017

8. For PAL to be exempted from paying excise tax on imported Jet A fuel, it must satisfy 3 requisites:
a. The basic corporate income tax or franchise tax, whichever is lower, must be paid; b. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and c. The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

In BIR Ruling 013-99, PAL's tax exemption from the importation of Jet A fuel was confirmed based on its non-availability in the local market. However, in 2002, DOE issued a certificate stating that aviation gas, fuel, and oil for use in domestic operation of domestic airline companies are locally available in reasonable price, quantity, and quality.

BIR then issued Ruling 001-3 which stated that based on the 2002 Certificate, PAL is no longer tax exempt from its importation of Jet A fuel.

PAL argued that it is still exempted because Jet A fuel is still not locally available in a

The court ruled that for PAL to be exempted, it must satisfy 3 requisites:

1. The basic corporate income tax or franchise tax, whichever is lower, must be paid

2. The articles, materials or supplies imported should be for its use in its transport and non-transport operations and other activities incidental thereto; and

3. The articles, materials or supplies should not be locally available in reasonable quantity, quality or price.

PAL was able to prove requisites 1 & 2 through sufficient evidence.

For requisite #3, the Court considered that in the computation of "locally available supply", importations are excluded. The Court found that only 2 companies (Shell & Petron) are locally refining aviation fuel. There is more demand than available local supply.

Therefore, PAL was able to prove that its imported Jet A-I Fuel was not locally available in reasonable quantity and price at the time of the importations, and therefore is exempted from tax.

PAL v. Commissioner of Internal Revenue, CTA Case No. 8143, July 17, 2017

9. ***To be subject to VAT, the properties must be "originally intended for sale or for use in the course of business". Also, considering that the subject transaction is in the nature of pre-incorporation stock subscription, it cannot be deemed as sale.***

In this case, the BIR found that petitioner Kingsville is a corporation primarily engaged in the real estate business and the two parcels of land which it assigned, transferred and conveyed to petitioner Century Peak were presumably held primarily for sale or use in the course of its business. Thus, the BIR ruled that the transfer of property by and between petitioners is considered a "sale, barter or exchange of goods or properties" subject to VAT.

The court ruled however, that to be subject to VAT, the properties must be "originally intended for sale or for use in the course of business". While petitioner Kingsville is a corporation primarily engaged in the real estate business, there is no proof that the subject two parcels of land it assigned to petitioner Century Peak in consideration of the 450,000 shares of stock are properties originally intended for sale or for use in the course of business.

Respondents failed to present any proof that these two parcels of land were part of petitioner Kingsville's inventory. Hence, the transaction covered by the Deed of Assignment is not a transaction deemed sale.

Moreover, in examination of the Deed of Assignment of the two parcels of land would show that it is a pre-incorporation subscription contract. Considering that the subject transaction is in the nature of pre-incorporation stock subscription, it cannot be deemed as sale.

Century Peak vs. CIR, CTA Case No. 9145, July 24, 2017

10. A charitable institution must controvert by evidence the BIR's finding that it is not "operated exclusively for charitable purpose" for the 10% preferential rate to apply.

The taxpayer is a religious, non-stock, non-profit and charitable institution operating a hospital.

The BIR found the taxpayer liable to pay the deficiency income tax, applying the 10°/o preferential rate under the Tax Code.

The court found that the taxpayer failed to present evidence to overcome the BIR's finding that the hospital is an institution "operated exclusively" for charitable purpose. A charitable institution must likewise be operated exclusively for charitable purposes for the exemption to apply. In the FDDA, the BIR found that for 2009, the hospital had revenues of P675,892,543.00 from services to paying patients. Thus, the BIR concluded that revenues from paying patients are income received from activities conducted for profit.

Even if the charitable institution must be 'organized and operated exclusively' for charitable purposes, 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'. It is true that the hospital was previously held to be an institution under Section 30(E) or (G) of the NIRC of 1997, as amended, which does not lose its tax exemption if it earns income from its for-profit activities. However, applying the Supreme Court ruling in St. Luke's, such income from for-profit activities, under the last paragraph of Section 30, shall still be subject to income tax, at the preferential 10°/o rate.

Thus, even if the hospital is considered to have satisfied the requirement that "no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person", the Court sustains the imposition of the 10°/o preferential tax rate, because the hospital failed to controvert by evidence the BIR's finding that the hospital is not "operated exclusively for charitable purpose".

Perpetual Succour Hospital of Cebu, Inc. vs. CIR, CTA Case No. 8912, July 25, 2017