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DU-BALADAD AND ASSOCIATES

SUMMARY OF SIGNIFICANT CTA DECISIONS (NOVEMBER 2017)

1. A sale of property for inadequate consideration (*i.e.*, the selling price is less than the fair market value) will be subject to donor's tax under Sec. 100 of the NIRC of 1997, as amended, regardless of the presence of donative intent.

The taxpayer is being assessed for deficiency donor's tax for property sold for less than fair market value, under Sec. 100 of the NIRC of 1997, as amended. The taxpayer contends that the transaction was a legitimate business transaction done in arm's length. Further, it contended that it had no intent to donate the property when it sold the same at a lower value.

The CTA ruled that the difference between the selling price and the zonal value of the property is subject to donor's tax, under Sec. 100 of the NIRC of 1997, as amended. The CTA reasoned that for Sec. 100 to apply, only the fact that the property was sold for less than adequate consideration is required. In this case, the property was sold for less than the applicable zonal value. **(*Vesta Property Holdings Inc. v. Commissioner of Internal Revenue CTA Case No. 9234 November 28, 2017)***

2. The lack of a valid Letter of Authority renders an assessment void.

The taxpayer was assessed with several deficiency taxes. However, it claims that it was not served a Letter of Authority. Further, the PAN and FAN were served simultaneously, on the same day.

The CTA ruled that the lack of LOA is fatal to the assessment conducted by the BIR. Under the Tax Code, a revenue officer must be validly authorized by an LOA in order for the assessment to be valid. Barring a valid LOA, the revenue officer has no authority to conduct an examination. The CTA applied the recent Supreme Court case of *Medicard v. Commissioner of Internal Revenue* which embodies the said rule. **(Catering Professionals, Inc. v. Commissioner of Internal Revenue CTA Case No. 8852 November 28, 2017)**

3. **Once the taxpayer denies receipt of the PAN, the BIR must prove that it served the PAN to the taxpayer, and that the same was received by the same, or by a duly authorized representative.**

The taxpayer was assessed with several deficiency taxes. It contends that there was no LOA in connection with the assessment. Further, the taxpayer denies receipt of the PAN.
The CTA, in applying the Supreme Court case of *Medicard v. Commissioner of Internal Revenue,* ruled that the lack of LOA makes the assessment void. Further, the CTA also noted that the BIR failed to prove that the PAN was served properly to the taxpayer. Although the registry receipt was presented, there was no proof that the person who received the PAN as indicated therein was properly authorized to receive the same in behalf of the taxpayer. **(Admorlina L. Fontejon v. Commissioner of Internal Revenue CTA Case No. 9314, November 28, 2017)**

4. **Continuous receipt of royalty fees constitute doing business in the Philippines.**

The taxpayer is claiming a refund of its unutilized input VAT incurred in relation to its zero-rated sales. The zero-rated sales were sales of services rendered to a non-resident foreign corporation. At the same time, the taxpayer has been continuously paying royalty fees to the non-resident corporation availing of its services.

The CTA denied the claim for refund. It ruled that the sales made to the non- resident foreign corporation are not zero-rated, since the non-resident foreign corporation is doing business in the Philippines. The Court considered the fact of continuous receipt of royalty fees as a sign of doing business. Thus, the sales made by the taxpayer are not considered zero-rated and therefore no refund is due. **(Amadeus Marketing Philippines v. Commissioner of Internal Revenue CTA Case No. 8869 November 27, 2017)**

5. **Only sales of goods and services consumed inside a PEZA Economic Zone are subject to VAT Zero-rating. Any payment of input VAT resulting from such a transaction should be refunded from the seller and not from the government.**

The taxpayer is claiming a refund of its input VAT incurred in relation to its zero-rated sales. Its sales for the entire taxable year are all zero-rated sales. The taxpayer is located within a PEZA Economic Zone.

The Court found that the taxpayer met the requirements for input VAT refund. However, only the input VAT incurred on services and goods consumed outside the Ecozone were granted. As to those consumed inside the PEZA Zone, the same is denied for availing of the wrong remedy. The taxpayer should have asked for a refund from the seller, applying the Supreme Court decision in *Coral Bay v. Commissioner of Internal Revenue*. The rationale is that the taxpayer should have not allowed its supplier to impose VAT on it for goods and services that will be consumed inside the PEZA Zone because these transactions are zero rated. **(Coral Bay Nickel Corporation v. Commissioner of Internal Revenue CTA Case No. 8804 November 23, 2017)**

6. **VAT Official Receipts should separately indicate the VAT component of the sale.**

The official receipts submitted by the taxpayer to the Court did not separately indicate the amount that pertains to VAT. The CTA then ruled that the same does not constitute proper evidence of input VAT incurred, as the failure to indicate the separate amount is a requirement under the law. **(MD Express Manila v. Commissioner of Internal Revenue CTA EB No. 1469, November 22, 2017)**

7. **The DST due for sale of shares with par value is based on the par value of the shares sold.**

The taxpayer seeks a refund of the DST it paid in connection with a subscription agreement it entered into for the purchase of shares of a different corporation. The shares that were purchased were par value shares. The taxpayer computed the DST based on the actual purchase price paid. In this transaction, the DST, if computed based on the actual purchase price will result to a higher amount of tax due, as compared to the DST if it is based on par value.

The CTA allowed the refund, since the Tax Code, as amended, base the computation of DST on the sale of shares of stock with par value, on the par value of the shares. Only the DST of sale of shares with no par value are supposed to be based on the actual consideration. Thus, the taxpayer overpaid the DST by computing the same based on actual consideration. **(Netpreneur Connection Enterprises, Inc. v. Commissioner of Internal Revenue CTA Case No. 9037, November 21, 2017)**

8. **Dividend income received by holding companies that are not classified as non-bank financial institutions cannot be subject to Local Business Tax (LBT).**

The taxpayer filed a refund of local business taxes (LBT) paid on its dividend income. The RTC ruled against the taxpayer. The RTC concluded that the taxpayer was taxed as a non-bank financial institution, which may be subjected to local business tax on its income, under the Local Government Code.

The CTA reversed the RTC, ruling that there is no proof that the taxpayer is a non-bank financial institution. Further, the taxpayer was able to prove that it is a holding company, and that it was not registered with the BSP as a non-bank financial institution. Thus, being a holding company and not a non-bank financial institution, the taxpayer may not be levied local business taxes on the dividends that it received. **(Metro Pacific Resources, Inc. v. City of Makati CTA AC No. 174, November 21, 2017)**

9. **Taxpayers may not invoke the defects in waivers of the defense of prescription if it is the one that caused the defect.**

The taxpayer argued that the other tax items have prescribed as the waivers it executed with the BIR are invalid for lack of authority of the taxpayer's signatory. The CTA applied the *Next Mobile* case. The defect in the waiver was actually caused by the taxpayer for it allowed a person with no authority to sign the waiver on its behalf. **(Commissioner of Internal Revenue v. Hoya Glass Disk CTA EB No. 1381, November 21, 2017)**

10. **A revenue officer who will replace a previously authorized revenue officer must be issued a new LOA. Otherwise, the resulting assessment conducted by the replacement revenue officer is void.**

The taxpayer claims that its right to due process was violated as the LOA was improperly delivered two days before it expired to a person who was not even required to produce his Identification Card. Further, the LOA was merely revalidated and no new LOA was issued. The audit was re-assigned to RO Tangonan vice RO Batalla through a mere indorsement.

The CTA ruled that the absence of a new LOA naming RO Tangonan as the new RO rendered him without authority to continue the examination/audit of the taxpayer's tax liability. Consequently, RO Tangonan acted without authority when he continued the audit of the taxpayer and recommended issuance of the assailed assessment. Hence, the assessment for deficiency IT and VAT is void. **(Royal Class Trading And Transport Corporation V. Commissioner of Internal Revenue CTA case NO. 8844, November 16, 2017)**

11. **An assessment based on industry benchmarks, or on third party matching without certifications from the third parties, are void for lack of legal and factual basis.**

The taxpayer was assessed with deficiency VAT and Income tax. The assessments, in part, were made through third-party matching, as well as by using the industry benchmarks.

The VAT assessment as a result of comparison using industry benchmarks is void. The same is not sufficient basis for an assessment. The CTA ruled that benchmarking is for the purpose of determining candidates for audit, and not for conducting the audit itself. As to the deficiency resulting from third party matching, the same is also void as the BIR did not obtain certifications from the third parties. The said items violated the requirement under the law that assessments should be based on facts and on the law. **(Wellform Trading Corporation v. Commissioner of Internal Revenue CTA Case No. 9086, November 27, 2017)**

12. **A revenue officer who will replace a previously authorized revenue officer must be issued a new LOA. Otherwise, the resulting assessment conducted by the replacement revenue officer is void.**

An assessment is void when the officer who conducts the examination or assessment has no authority to do so. Considering that the Revenue Officers named in the LOA were subsequently replaced, and that no new LOA was issued to the replacement Revenue Officers, then these new officers were not duly authorized as required by law. Therefore, the resulting assessment, having been done without valid authority, is void. **(Commissioner of Internal Revenue V. Ithiel Corporation CTA EB NO. 1551, November 17, 2017)**

13. **The BOI Certification that the corporation is a 100% exporter is insufficient to prove that the taxpayer has export sales.**

The taxpayer sought to reverse the CTA Division ruling, stating that it is not entitled to its claim for VAT Refund attributable to its zero-rated sales for the TY 2010 as it failed to present any bills of lading or airway bills to prove that there were actual shipments of its direct export sales from the Philippines to a foreign country as required under the Tax Code. The Court in Division found the BOI Certification did not sufficiently meet the legal requirement that there must be actual shipment of the goods from the Philippines to a foreign country.

The Court En Banc concurs with the ruling of the Court in Division that *"the presentation of the Certification from the Board of Investments dated January 14, 2011, certifying that 100°/o of petitioner's sales volume/value for calendar year 2010 were by way of exports does not sufficiently meet the requirement of the law that there must be actual shipment of the goods from the Philippines to a foreign country."*

As required by the Tax Code, there must be an actual shipment of the goods from the Philippines to a foreign country, where the fact of actual shipment can be evidenced by the export declaration and bill of lading or airway bill. **(Carmen Copper Corporation V. Commissioner of Internal Revenue CTA EB NO. 1461, 16 NOVEMBER 2017)**

14. **Cases litigated in the CTA are tried *de novo*, meaning the Court is not precluded from accepting pieces of evidence it deems relevant to the case.**

The CIR argues that the taxpayer's alleged failure to submit complete documents at the administrative level and to comply with RMO No. 53-98 refrained the court from acquiring jurisdiction.

The CTA ruled that it is not precluded from admitting evidence even assuming that they were not presented to the BIR at the administrative level. After all, cases filed in the CTA are litigated *de novo.* Thus, the taxpayer should prove every minute aspect of its case by presenting, formally offering and submitting to the Court all evidence required to justify the grant of its claim for refund. **(Commissioner of Internal Revenue V. CE Casecnan Water And Energy Company, Inc. CTA EB NO. 1510, November 16, 2017)**

15. **The PAN and FLD/FAN must be properly served to the taxpayer. Failure to serve the said documents to the taxpayer constitutes a violation of the taxpayer's right to due process, and renders the assessment void.**

The CTA found that the taxpayer has transferred its address effective 2009. Further, the taxpayer has properly filed an Application for Information Update (BIR Form 1905) with the Revenue District Office No. 47 indicating the said new address as early as December 2, 2009**.** A Transfer Commitment Form signed by the General Manager of the taxpayer and filed with the BIR on December 2, 2009 further evidences the official notice of change of address to the BIR as of said date. In spite of this official notification, the revenue officers still served the PAN and the FAN to the old address in Makati. Given the failure of the BIR to properly serve the PAN and FLD/FAN, the same constitutes a violation of the taxpayer's right to due process, which renders the assessment void. **(Daewoo engineering and construction supply v. Commissioner of internal revenue CTA Case No. 8829, November 6, 2017)**

16. **The taxpayer must duly prove that the input VAT it incurred are attributable to zero-rated sales.**

The CTA noted that the ICPA Report shows that the documents offered as evidence by the taxpayer were not verified by the ICPA as faithful reproduction of the originals thereof. Thus, it is as if it offered no evidence, and thus it failed to prove that it incurred zero-rated sales. **(Colt Commercial V. Commissioner Of Internal Revenue CTA Case No. 9110, October 6, 2017)**

17. **The requirement that the words "VAT zero-rated" be printed on official receipts/invoices is imposed by law, and the absence of which renders official receipts/invoices insufficient evidence to prove entitlement to VAT refund.**

The Court found that the ORs do not bear the words "zero-rated sale", which is a clear violation of the invoicing requirements, prescribed by Section 113 of the Tax Code. Failure of a taxpayer to print the word 'zero-rated' on its invoices or receipts is fatal to its claim for tax refund of input VAT on zero-rated sales. **(Maersk Global Services v. Commissioner Internal Revenue CTA Case No. 9015, November 5, 2017)**

18. **A valid protest must contain the law and the facts on which the protest is based on. Without which, the FLD/FAN is considered to have not been protested, and attains finality.**

The BIR asserts that there is no valid protest, making the assessments final and executory, since the taxpayer only filed a one-page protest, without stating the law and the facts on which its protest is based.

The CTA ruled that the protest to the FAN is not a valid protest as it is not in compliance with the pertinent provisions of RR12-99 as amended by RR 18-2013; thus, the FAN and FLD became final, executory and demandable. In this case, the taxpayer failed to state the newly discovered or additional evidence that it intends to present in support of its request, it failed to state the date of the FAN, and failed to dispute the assessment by stating the legal bases of its protest. Thus, failure to contest the validity and correctness of the FAN in the manner prescribed by law made the FAN final and executory. **(Tektite Insurance Brokers, Inc. vs. Commissioner of Internal Revenue CTA Case No. 8903; November 3, 2017)**

19. **The LOA is the proper source of authority of revenue officers. Any audit conducted prior to its issuance is void.**

Records show that the BIR conducted a computerized matching of the information/data provided by withholding agents/payors and payees, and the taxpayer's sales/revenues/receipts declared in the ITR and VAT returns, even before the Letter of Authority was issued. The BIR issued the Letter Notice on November 29, 2011, by virtue of which the Revenue Officer conducted its examination. The examination started even before the issuance of the LOA on February 16, 2013. Thus, the FAN is void. **(Sparkland Realty Inc., vs. Commissioner of Internal Revenue CTA Case No. 8824; November 3, 2017)**

20. **The 120 + 30 day period stated in the Tax Code is jurisdictional. Failure to observe the same deprives the CTA of jurisdiction to hear a VAT refund case.**

The CTA ruled that the judicial claim is barred by prescription. Records show that the taxpayer did not submit additional documents, nor was requested by the BIR to submit additional documents during the 120-day-period under Section 112 of the Tax Code. Hence, the taxpayer is deemed to have submitted its complete supporting documents when it filed its administrative claim. Thus, the counting of the 120 days commenced from the filing of the administrative claim. However, the subsequent petition for review was filed before the CTA beyond 30 days from the expiration of the 120 days. Thus said petition was belatedly filed. As such, petitioner's failure to observe the mandatory and jurisdictional 120+30-day period rendered the Court devoid of jurisdiction. **(Carmen Copper Corporation V. Commissioner of Internal Revenue CTA Case No. 8834, 03 November 2017**)

21. **Failure to serve the FLD/FAN constitutes a violation of a taxpayer's right to due process, and renders the assessment void.**

The accused was charged for violation of Section 255 of the Tax Code for willfully and unlawfully failing and neglecting to pay his deficiency income tax and deficiency VAT, exclusive of interests and surcharges, covering the taxable year 2004. The accused argues that there is no cause of action against him since there is no proof that he received the assessment notice and that the period to assess him, as well as the charge against him has already prescribed.

The CTA ruled that a FAN never attains finality when the taxpayer never receives it, actually or constructively. The prosecution was not able to successfully establish that the accused was served with the Formal Letter of Demand (FLD) and Assessment Notices, requiring accused to pay the deficiency taxes. Thus, the legal obligation of the accused to pay said taxes did not arise. Although the FLD and Notice of assessment were properly addressed, for the purpose of presumption under Rule 131 of the Rules of Court, since accused did not inform BIR of his change of address; the prosecution failed to prove the fact of mailing. Prosecution claims that it sent the FLD and Notice of assessment via registered mail yet it failed to present the registry receipt issued by the Bureau of Post or the registry return card in connection with the mailing nor the Bureau of Posts Certification. **(People of The Philippines vs. Paulasi Mateaki Taulava**
CTA Crim Case No. O-039; November 3, 2017)