BDB Law wts
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SUMMARY OF SIGNIFICANT SC TAX DECISIONS (January to June 2016)

1. The the premature filing of a claim for refund or credit if input VAT before the CTA warrants the dismissal since no jurisdiction is acquired by the tax court.

On March 11, 2002, taxpayer filed an administrative claim for refund of unutilized input VAT covering the year 2007. Thereafter, fearing that the period for filing a judicial claim for refund was about to expire, the taxpayer proceeded to file a petition for review before the CTA, without waiting for the action of the BIR. The CTA granted the claim but at a reduced amount.

On appeal to the Supreme Court, the SC reversed the CTA decision on the ground that the petition before the CTA was prematurely filed, and therefore the CTA lacked jurisdiction to entertain the judicial claim. Citing the case of *CIR vs. Aichi Forging Company of Asia, Inc. (646 Phil 710 – 2010*), the premature filing of a claim for refund or credit if input VAT before the CTA warrants the dismissal, inasmuch as no jurisdiction is acquired by the tax court. The taxpayer filed its petition for review with the CTA on March 26, 2002 or a mere 15 days after it filed its administrative claim. It did not wait for the lapse of the 120-day period expressly provided for by law within which the BIR shall grant or deny the application for refund. The 120-day period is mandatory and jurisdictional and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. (***Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation, G.R. No. 180434, January 20, 2016)***

2. Taxpayer's lapse in procedures makes the BIR's assessment final, executory and demandable.

On January 17, 2008, taxpayer received a Final Assessment Notice (FAN), demanding payment of deficiency fringe benefits tax (FBT). On January 24, 2008, taxpayer filed a protest to the FAN addressed to the Regional Director ("RD") of Revenue Region No. 6 of the BIR. On August 14, 2008, taxpayer elevated its protest to the Commissioner, there being no actual action taken thereon as of such date. In a letter dated September 23, 2008, taxpayer was informed that the Legal Division of Revenue Region No. 6 sustained the revenue officer on the imposition of FBT against it based on the provisions of Revenue Regulations (RR) No. 3-98 and that its protest was forwarded to the Assessment Division for further action. On November 19, 2008, taxpayer received a letter from the OIC-Regional Director, Revenue Region No. 6, stating that its letter protest was referred to Revenue District Office No. 33 for appropriate action. On March 11, 2009, taxpayer filed the Petition for Review before the CTA alleging BIR's inaction in its protest on the disputed deficiency FBT.

The Supreme Court dismissed the petition on the ground that the filing of petition before the CTA was premature. According to the SC, a textual reading of Section 3.1.5 of RR 12-99 gives a protesting taxpayer only three options:

1. If the protest is wholly or partially denied by the CIR ***or*** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the

protest.

2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.

3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.

Taxpayer did not wait for the RD or the CIR's decision on its protest. Taxpayer made separate ***and*** successive filings before the RD and the CIR before it filed its petition with the CTA. Taxpayer's protest to the RD on 24 January 2008 was filed within the 30-day period prescribed in Section 228 and Section 3.1.5 of RR 12-99. The RD did not release any decision on taxpayer's protest. Thus, taxpayer was unable to make use of the first option as described above to justify an appeal to the CTA. The effect of the lack of decision from the RD is the same, whether to consider taxpayer's April 2008 submission of documents or not.

Under the third option described above, even if leeway is granted to taxpayer and consider its unspecified April 2008 submission, taxpayer still should have waited for the RD's decision until 27 October 2008, or 180 days from 30 April 2008. Taxpayer then had 30 days from 27 October 2008, or until 26 November 2008, to file its petition before the CTA. Taxpayer, however, did not make use of the third option. Taxpayer did not file a petition before the CTA on or before 26 November 2008.

Under the second option, taxpayer ought to have waited for the RD's whole or partial denial of its protest before it filed an appeal before the CIR. Taxpayer rendered the second option moot when it formulated its own rule and chose to ignore the clear text of Section 3.1.5 of RR 12-99. Taxpayer "elevated an appeal" to the CIR on 13 August 2008 ***without*** any decision from the RD, then filed a petition before the CTA on 11 March 2009. A textual reading of Section 228 and Section 3.1.5 will readily show that neither Section 228 nor Section 3.1.5 provides for the remedy of an appeal to the CIR in case of the RD's failure to act. The third option states that the remedy for failure to act by the CIR or his authorized representative is to file an appeal to the CTA within 30 days after the lapse of 180 days from the submission of the required supporting documents. Taxpayer clearly failed to do this.

If we consider, for the sake of argument, taxpayer's submission before the CIR as a separate protest and not as an appeal, then such protest should be denied for having been filed out of time. Taxpayer only had 30 days from 17 January 2008 within which to file its protest. This period ended on 16 February 2008. Taxpayer filed its submission before the CIR on 13 August 2008.

When taxpayer filed its petition before the CTA, it is clear that taxpayer failed to make use of any of the three options described above. **A petition before the CTA may only be made after a whole or partial denial of the protest by the CIR or the CIR's authorized**

representative. When taxpayer filed its petition before the CTA on 11 March 2009, there was still no denial of taxpayer's protest by either the RD or the CIR. Therefore, under the first option, taxpayer's petition before the CTA had no cause of action because it was prematurely filed. The CIR made an unequivocal denial of taxpayer's protest only on 18 July 2011, when the CIR sought to collect from taxpayer. The CIR's denial further puts taxpayer in a bind, because it can no longer amend its petition before the CTA.

Taxpayer has clearly failed to comply with the requisites in disputing an assessment as provided by Section 228 and Section 3.1.5 of RR 12-99. Indeed, taxpayer's lapses in procedure have made the BIR's assessment final, executory and demandable. (***Philippine Amusement and Gaming Corporation vs. Bureau of Internal Revenue, G.R. No. 208731, January 27, 2015)***

3. Compliance with the 120+30 day period in a claim for refund of unutilized input taxes is jurisdictional.

Taxpayer filed its administrative claims for refund of the VAT paid on imported capital goods, as follows:

2nd quarter of 2001 - filed on October 16, 2001
3rd quarter of 2001 – filed on September 04, 2002
4th quarter of 2001 – filed on September 04, 2002

Because of the continuous inaction by the BIR on the administrative claims of the taxpayer, the latter filed separate petitions for review before the CTA, as follows:

2nd quarter of 2001 - filed on 30 July 2003
3rd quarter of 2001 – filed on 20 October 2003
4th quarter of 2001 - filed on 30 December 2003

On appeal to the Supreme Court, the SC dismissed the case for lack of jurisdiction on the part of the CTA. According to the SC, upon the filing of an administrative claim, the BIR is given a period of 120 days within which to (1) grant a refund or issue the tax credit certificate for creditable input taxes; or (2) make a full or partial denial of the claim for a tax refund or tax credit. Failure on the part of the BIR to act on the application within the 120-day period shall be deemed a denial. The 120-day period begins to run from the date of submission of complete documents supporting the administrative claim. If there is no evidence showing that the taxpayer was required to submit - or actually submitted - additional documents after the filing of the administrative claim, it is presumed that the complete documents accompanied the claim when it was filed. Considering that there is no evidence in this case showing that taxpayer made later submissions of documents in support of its administrative claims, the 120-day period within which the BIR was allowed to act on the claims shall be reckoned from 16 October 2001 and 4 September 2002. Whether respondent rules in favor of or against the taxpayer - or does not act at all on the administrative claim - within the period of 120 days from the submission of complete documents, the taxpayer may resort to a judicial claim before the CTA.

The judicial claim shall be filed within a period of 30 days after the receipt of the BIR's decision or ruling or after the expiration of the 120-day period, whichever is sooner. Aside from a specific exception to the mandatory and jurisdictional nature of the periods provided by the law, any claim filed in a period less than or beyond the 120+30 days provided by the NIRC is outside the

jurisdiction of the CTA. As shown by the table below, the judicial claims of the taxpayer were filed beyond the 120+30 day period:

Taxable Quarter of 2001	Administrative Claim Filed	End of the 120-day Period	End of the 30-day Period	Judicial Claim Filed	Number of Days Late
2nd	16 October 2001	13 February 2002	15 March 2002	30 July 2003	502 days
3rd	4 September 2002	2 January 2003	1 February 2003	20 October 2003	261 days
4th	4 September 2002	2 January 2003	1 February 2003	30 December 2003	332 days

As things stood, the CTA had no jurisdiction to act upon, take cognizance of, and render judgment upon the petitions for review filed by the taxpayer. The judicial claims filed with the CTA were dismissed for lack of jurisdiction. (***Silicon Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 182387, March 02, 2016)***

4. The requirement for depositing an amount or posting a surety bond as a condition for the suspension of the collection of taxes may be dispensed with.

In May 2012, the BIR issued Formal Letter of Demand against Spouses Emmanuel and Jinkee Pacquiao, finding them liable for deficiency income tax and VAT amounting to P766,899,530.62 for taxable year 2008 and P1,433,421,214.61 for 2009, inclusive of the interests and surcharges. The Spouses questioned the findings of the BIR. In May 2013, the BIR issued its Final Decision on Disputed Assessment (FDDA) addressed to Emmanuel Pacquiao only, informing him that the BIR found him liable for deficiency income tax and VAT for taxable years 2008 and 2009 which, inclusive of interests and surcharges, amounted to a total of P2,261,217,439.92. Subsequently, the BIR issued Preliminary Collection Letters (PCL) demanding that both Emmanuel and Jinkee Pacquiao pay the amount of P2,261,217,439.92, inclusive of the interests and surcharges. The BIR then later issued Final Notice Before Seizure (FNBS) informing them of their last opportunity to make the necessary settlement of deficiency income and VAT liabilities before the BIR would proceed against their property. Through a series of installment, the Spouses paid the VAT liability in the total amount of P32,196,534.40. But aggrieved that they are being made liable for deficiency income tax, the Spouses filed a Petition for Review with the CTA.

Pending the resolution by the CTA of the petition, the Spouses sought from the BIR the suspension of the issuance of warrants of distraint and/or levy and warrants of garnishment. In a letter, the BIR denied the request and instead informed the Spouses that despite their initial payment, the amount to be collected from both of them still amounted to P3,259,643,792.24 for deficiency income tax for the taxable years 2008 and 2009 and P46,920,235.74 for deficiency VAT for the same period. A warrant of distraint and/or levy was also included in the letter. The Spouses filed a motion before the CTA to lift the warrants of distraint, levy and garnishment issued by the BIR. As to the cash deposit or bond requirement under Section 11 of Republic Act No. 1125, they questioned the necessity thereof arguing that the BIR's assessment is highly

questionable. The CTA granted and ordered the BIR to desist from collecting the deficiency tax assessment, but required the Spouses to deposit the amount of P3,298,514,894.35 or post a bond in the amount of P4,947,772,341.53. The request for reconsideration for the reduction of the amount of the bond was denied.

Spouses filed a petition before the Supreme Court arguing, among others, that the CTA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in requiring the Spouses to post a cash bond in the amount of P3,298,514,894.35 or a surety bond in the amount of P4,947,772,341.53.

As held by the Supreme Court, based on Section 11 of RA 1125, appeal will not suspend the collection of tax. However, when in the view of the CTA, the collection may jeopardize the interest of the government and/or the taxpayer, it may suspend said collection and require the taxpayer to either deposit the amount claimed or to file a surety bond. Citing the case of *Collector of Internal Revenue v. Avelino (100 Phil 327, 1956)* and *Collector of Internal Revenue v. Zulueta (100 Phil 872, 1957),* the Supreme Court held that the CTA has ample authority to dispense with the deposit of the amount claimed or the filing of the required bond, whenever the method employed by the BIR in the collection of tax jeopardizes the interest of the taxpayer for being patently in violation of law. Whenever it is determined by the courts that the method employed by the BIR in the collection of tax is not sanctioned by law, the bond requirement under Section 11 of RA 1125 should be dispensed with. In this case, the Supreme Court noted that the CTA should have conducted a preliminary hearing and received evidence so it could have properly determined whether the requirement of providing the required security under Section 11 of RA 1125 could be reduced or dispensed with. The case was remanded to the CTA to conduct preliminary hearing. ***(Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao vs. The Court of Tax Appeals – First Division and the Commissioner of Internal Revenue, G.R. No. 213394, April 05, 2016)***

5. A final decision on disputed assessment that is declared void does not necessarily result in a void assessment.

The taxpayer was issued formal letter of demand/formal assessment notice (FAN), assessing it for, among others, deficiency expanded withholding tax (EWT) and deficiency fringe benefits tax (FBT), together with the attached details of discrepancies. After the taxpayer protested the assessment, the BIR issued the final decision on disputed assessment (FDDA) still finding the taxpayer liable for deficiency EWT and FBT, but at amounts different from those stated in the FAN without stating the factual bases. On appeal, the CTA ruled that the EWT and FBT assessment was void for failure of the FDDA to provide the details thereof.

On appeal to the Supreme Court, the Court noted that Section 3.1.6 of RR No. 12-99 specifically requires that the decision of the Commissioner or his duly authorized representative on a disputed assessment to state the facts, law and rules and regulations, or jurisprudence on which the decision is based. Failure to do so will invalidate the FDDA. Thus, the Supreme Court agreed with the CTA that the FDDA was void for failure to comply with the requirements of RR No. 12-99 that the FDDA shall state the facts and the law on which the decision is based. While it provided for the legal basis for the assessment, it fell short of informing the taxpayer of the factual bases thereof. Thus, the FDDA as regards the EWT and FBT tax deficiency did not comply with the requirement in Section 3.1.6 of RR 12-99, for failure to inform the taxpayer of the factual basis thereof. As the amounts in the FDDA are different from those in the FAN, it

becomes even more imperative that the FDDA contains details of the discrepancy. Failure to do so would deprive the taxpayer adequate opportunity to prepare an intelligent appeal.

The Court, however, made a distinction between an assessment and a decision. According to the Court, the invalidity of one does not necessarily result to the invalidity of the other – unless the law or regulations otherwise provide. The nullification of the FDDA does not extend to the nullification of the entire assessment. An FDDA that does not inform the taxpayer in writing of the facts and law on which it is based renders the decision void. It is as if there was no decision rendered. It is tantamount to a denial by inaction, which may still be appealed before the CTA and the assessment evaluated on the bases of the available evidence and documents. The merits of the EWT and FBT assessment should have been discussed and not merely brushed aside on account of the void FDDA. To recapitulate, a "decision" differs from an "assessment" and failure of the FDDA to state the facts and law on which it is based renders the decision void – but not necessarily the assessment. The case is remanded to the CTA for the assessment on EWT and FBT. ***(Commissioner of Internal Revenue vs. Liquigaz Philippines Corporation, G.R. No. 215534, April 18, 2016)***

6. Real property taxation of submarine cable systems.

The taxpayer was issued an Assessment for Real Property Taxation. In essence, the provincial Assessor of Batangas has determined that the submarine cable systems are taxable real property, a determination that was contested between the taxpayer and the assessors in an exchange of letters. On February 7, 2003 and March 4, 2003, the taxpayer received a Warrant of Levy and Notice of Auction Sale, respectively, from the Provincial Assessor of Batangas. On March 10, 2003, taxpayer filed a Petition for Prohibition and Declaration of Nullity of Warrant of Levy, Notice of Auction Sale and/or Auction Sale with the Regional Trial Court (RTC) of Batangas. The RTC dismissed the petition for failure of the taxpayer to follow the requisite payment under protest as well as failure to appeal to the Local Board of Assessment Appeals (LBAA), as provided under Section 206 and 226 of the Local Government Code (LGC). The Court of Appeals affirmed the decision of the RTC.

The taxpayer appealed to the Supreme Court (SC) asserting that recourse to the LBAA or payment of tax under protest is inapplicable since there is no question of fact involved or that the question involved is not the reasonableness of the amount assessed but the authority and power of the assessor to impose tax. Taxpayer contends that there is only a pure question of law since the issue is whether the submarine cable system, which it claims lies in international waters is taxable. On appeal to the Supreme Court, the Court ruled as follows:

1. In disputes involving real property taxation, the general rule is to require the taxpayer to first avail of administrative remedies and pay the tax under protest before allowing any resort to a judicial action, except when the assessment itself is alleged to be illegal or is made without legal authority. For example, prior resort to administrative action is required when among the issues raised is an allegedly erroneous assessment, like when the reasonableness of the amount is challenged, while direct court action is permitted when only the legality, power, validity or authority of the assessment itself is in question. Stated differently, the general rule of a prerequisite recourse to administrative remedies applies when questions of fact are raised, but the exception of direct court action is allowed when purely questions of law are involved. Taxpayer's case is one replete with questions of fact instead of pure questions of law, which renders its filing in a judicial forum improper because it is instead cognizable by local administrative bodies like the LBAA, which are the proper venues for trying these factual issues.

Verily, what is alleged by taxpayer in its petition as "the crux of the controversy," that is, "whether or not an indefeasible right over a submarine cable system that lies in international waters can be subject to real property tax in the Philippines," is not the genuine issue that the case presents - as it is already obvious and fundamental that real property that lies outside of Philippine territorial jurisdiction cannot be subjected to its domestic and sovereign power of real property taxation - but, rather, such factual issues as the extent and status of taxpayer's ownership of the system, the actual length of the cable/s that lie in Philippine territory, and the corresponding assessment and taxes due on the same, because the assessors imposed and collected the assailed real property tax on the finding that at least a portion or some portions of the submarine cable system that taxpayer owns or co-owns lies inside Philippine territory. Taxpayer's disagreement with such findings of the administrative bodies presents little to no legal question that only the courts may directly resolve.

2. Submarine or undersea communications cables are akin to electric transmission lines which the Court has recently declared in *Manila Electric Company v. City Assessor and City Treasurer of Lucena City*, as "no longer exempted from real property tax" and may qualify as "machinery" subject to real property tax under the LGC. To the extent that the equipment's location is determinable to be within the taxing authority's jurisdiction, the Court sees no reason to distinguish between submarine cables used for communications and aerial or underground wires or lines used for electric transmission, so that both pieces of property do not merit a different treatment in the aspect of real property taxation. Both electric lines and communications cables, in the strictest sense, are not directly adhered to the soil but pass through posts, relays or landing stations, but both may be classified under the term "machinery" as real property under Article 415(5) of the Civil Code for the simple reason that such pieces of equipment serve the owner's business or tend to meet the needs of his industry or works that are on real estate.

3. As the Court takes judicial notice that Nasugbu is a coastal town and the surrounding sea falls within what the United Nations Convention on the Law of the Sea (UNCLOS) would define as the country's territorial sea (to the extent of 12 nautical miles outward from the nearest baseline, under Part II, Sections 1 and 2) over which the country has sovereignty, including the seabed and subsoil, ·it follows that indeed a portion of the submarine cable system lies within Philippine territory and thus falls within the jurisdiction of the said local taxing authorities. It easily belies taxpayer's contention that the cable system is entirely in international waters. ***(Capitol Wireless, Inc. vs. The Provincial Treasurer of Batangas, the Provincial Assessor of Batangas, the Municipal Treasurer and Assessor of Nasugbu, Batangas, G.R. No. 180110, May 30, 2016)***