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Tax Case Digest on…

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DECISION HIGHLIGHTS

Receipt of notices by unauthorized person cannot be deemed as receipt by the Taxpayer.

Taxpayer IBM Plaza Condominium Association alleged that the issuance of the Warrant of Distraint and/or Levy (WDL) violates its right to due process since the LOA, the PAN and FAN were received by unauthorized persons on behalf of IBM. Also, the FAN was allegedly issued before the expiration of the fifteen (15)-day period allowed to reply to the PAN and no FDDA was issued by the BIR. BIR alleged that the LOA, the PAN and the FAN were personally served to the Taxpayer and a certain Ms. Janice Melendrez received the same.

The CTA ruled that the issuance of the WDL violated the Taxpayer's right to due process since the person who received the LOA and other Notices from the BIR was not authorized by IBM Plaza to receive the same. Ms. Janice Melendrez was an administrative assistant of IBM Plaza. BIR failed to present any evidence to show that they served the notices to any duly authorized representatives. It is incumbent upon the BIR to show that the notices were received by the taxpayer or the taxpayer's authorized representative. The fact that the taxpayer was able to protest the FAN does not cure the BIR's violation of petitioner's right to due process.Thus the receipt of the notice cannot be deemed as receipt by the Taxpayer. Hence, the assessment is void. ***(IBM Plaza Condominium Association, Inc., vs Commissioner of Internal Revenue, CTA Case No. 8740, September 2, 2019)***

Our Take

Note: In this case, while the Court ruled that the BIR must be able to prove that the notices were duly served to the taxpayer or to authorized representative, the Court did not however rule who are considered authorized representative of the taxpayer.

Presentation of proof of actual receipt of the assessment by the taxpayer is required in order to establish that the right of the taxpayer to be informed of the assessment has not been violated.

Jopauen Realty alleged that assessment is void for the failure of the BIR to issue a PAN and FAN and that the Taxpayer allegedly did not receive the same. BIR denies such allegations and countered that Taxpayer even actively participated in the Informal Conference. Hence, the issue in this case is whether the assessment is void for failure to issue a PAN and FAN.

The CTA held that the presentation of proof of actual receipt of the assessment by the taxpayer is required in order to establish that the right of the taxpayer to be informed of the assessment has not been violated. Here, the registry return receipt card for the PAN would show that the portion where signature of the person who received the notice is blank. Hence, BIR failed to prove that the PAN was received by Taxpayer. Thus, the assessment is void. ***(Jopauen Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8943, September 13, 2019)***

A waiver executed after the lapse of the prescribed period for the BIR to assess is an invalid waiver.

Taxpayer challenged the VAT deficiency assessment of the BIR alleging the latter's right to assess has prescribed. The BIR argued to the contrary and showed that the Taxpayer executed a Waiver extending the period within which the assessment may be made.

The CTA held that the right of the BIR to assess the Taxpayer has prescribed. The Waiver executed is invalid for the same was executed after the 3-year period to assess has lapsed. The alleged deficiency arose from a sale transaction in the year 2007. However, the Waiver was executed in the year 2011 which is beyond the prescribed period. Thus, the BIR's right to assess has already prescribed. ***(Philippine Communications Satellite Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9219, September 11, 2019)***

In proving that the imported aviation fuel was, indeed, used in Taxpayer's transport and non-transport operations and other activities incidental thereto, the ATRIG is sufficient so long as it is corroborated by other documentary and testimonial evidence.

PAL paid under protest certain amounts allegedly representing specific taxes paid on its importation of Jet A-1 fuel for domestic operations. The CTAt originally ruled that the Authority to Release Imported Goods (ATRIGs) presented by the Taxpayer is insufficient to prove that the imported Jet A-1 fuel was used for its transport and non-transport operations. The Taxpayer alleged otherwise.

The CTA ruled that as long as the ATRIG is corroborated by other documentary and testimonial evidence, then they may be considered as proof that the imported aviation fuel was, indeed, used in Taxpayer's transport and non-transport operations and other activities incidental thereto. Here, the additional evidence presented by PAL, both testimonial and documentary, sufficiently established that the importation of subject aviation fuel was for its transport operations and other activities incidental thereto. Hence, it satisfies the second condition for its entitlement for the refund. ***(Philippine Airlines, Inc., vs. Commissioner of Internal Revenue and Commissioner of Customs, CTA Case No. 8220, September 26, 2019)***

If both parties in a case are in pari delicto or in equal fault, the Taxpayer is estopped from raising any objection against the validity of the waivers it previously executed.

In this case, the Taxpayer raised the defense that BIR's right to assess has prescribed. The BIR countered that the Taxpayer executed valid Waivers extending the prescriptive period for the BIR to assess the latter and the same was signed by its Corporate President. The Taxpayer challenged the validity of the Waivers alleging that its Corporate President was not authorized to execute and sign the waivers on behalf of Taxpayer.

The CTA ruled that since the subject waivers were executed prior to the issuance of RMO No. 14-16, the governing BIR Issuances in force at that time shall be observed which is RMO No. 20-90 and RDAO No. 05-01. The said RMO and RDAO requires the presentation of a written and notarized authority to the

BIR. Here, there was no Board Resolution authorizing its President to sign the waivers on its behalf. However, the Court took note that the Taxpayer only raised the issue on the validity of the waiver on appeal. Thus, the Court finds Taxpayer in bad faith when it impugns the authority of its own signatory after it has benefited from the extended period of assessments. Even though the parties were both aware of the infirmities of the subject waivers, they still continued their dealings with each other on the strength of these waivers. Thus, since both parties in this case are in pari delicto or in equal fault, the Taxpayer is estopped from raising any objection against the validity of the said waivers. ***(First Philippine Power Systems Inc., vs. Commissioner of Internal Revenue, CTA Case No. 9067 September 9, 2019)***

When the Taxpayer denied the receipt of PAN and FAN, the BIR has the burden to prove otherwise.

The Taxpayer in this case disputes the assessments issued by the BIR alleging that she never received any PAN and FAN since the same were sent to her old address. The BIR countered that the PAN and FAN were mailed to the address indicated in their system and offered the transmittal as proof of mailing of the subject notices.

The CTA ruled that when the Taxpayer denied the receipt of PAN and FAN, the BIR has the burden to prove otherwise. Here, the BIR witness admitted that it never received the registry return card from the Taxpayer. The presentation of the transmittal letter and registry receipts merely shows that the PAN and FAN were mailed by BIR. However, with regard to their receipt thereof, BIR failed to show that the registry return card was signed by Taxpayer or her authorized representative. Thus, the assessments are void. ***(Indra Verhomal Menghrajani, Represented By Daughter Savitri V. Menghrajani, vs. Hon. Kim Jacinto-Henares in her Capacity as Commissioner as Internal Revenue, CTA Case No. 9269, September 24, 2019)***

A final assessment is a notice "to the effect that the amount therein stated is due as tax and a demand for payment thereof." this demand for payment signals the time "when penalties and interests begin to accrue against

Taxpayer is seeking to reverse and set aside the Final Assessment Notice (FAN) dated July 22, 2015, in the aggregate amount of Php127,130,709.77, representing alleged deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT). Petitioner contends that the final assessments for VAT and EWT are fatally infirm for failure to indicate the due date for payment thereof.

The CTA ruled that a perusal of the Audit Result/ Assessment Notices for VAT and EWT, reveals that there are two dates appearing in the "DUE DATE" portion thereof. On the upper portion, the due date indicated is April 30, 2015, while the lower portion indicates July 31, 2015. The two different due dates indicated in the VAT and EWT assessment notices leaves the taxpayer in a quandary as to when payment should be made. Thus, similar to when no due date is

the taxpayer and enabling the latter to determine his remedies." Thus, it must be "sent to and received by the taxpayer and must demand payment of taxes described therein within a specific period.

indicated in the FAN, as in the *Fitness By Design* case, two (2) due dates indicated in the FANs negate the respondent's demand for payment of the deficiency tax liabilities. **(*Benchmark Marketing Corp. vs. Commissioner of Internal Revenue, CTA Case No. 9296, September 04, 2019*)**

The Supreme Court ruled that it is not enough that the recipient of the service be shown to be a foreign corporation, it must likewise be established that the said recipient is a "non-resident foreign corporation." Hence, to be considered as a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and proof of incorporation, association or registration in a foreign country.

Taxpayer filed its administrative claim for refund or issuance of TCC for its alleged unutilized/unclaimed excess input taxes attributable to petitioner's zero-rated sales/receipts for the TY 2014.

To prove that the Recipients of its services are doing business outside the Philippines, taxpayer presented the Certificates of Non-Registration of Company issued by the SEC, Certificates of Registration/ Articles of Incorporation issued by the foreign government agencies, screenshots of foreign registration per foreign regulatory websites and Consularized Manning Agreements/Purchasing & Infrastructure Support Agreements, proving that its customers are non-resident foreign corporations doing business outside the Philippines.

The CTA partially granted the claim for refund of the taxpayer ruling that the taxpayer has sufficiently proven its entitlement to refund or issuance of a TCC in the reduced amount of Php5,503,628.95 representing its unutilized input VAT attributable to its zero-rated sales for the four quarters of taxable year 2014. ***(BW Shipping Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 9448, September 23, 2019)***

Hearsay evidence is defined as 'evidence not of what the witness knows himself but of what he has heard from others.' The hearsay rule bars the testimony of a witness who merely recites what someone else has told him, whether orally or in writing.

BIR assessed BSP for payment of DST pursuant to foreclosure sales. BSP seeks to refund the DST, surcharge and interest it paid with the BIR. Without the decision of the BIR on its claim for refund, BSP filed a Petition for Review with the CTA. BSP asserts that it paid the subject DST and penalties, as evidenced by Credit Advices to the Bureau of Treasury.

The CTA ruled that the pieces of evidence cannot be given credence by the Court for being hearsay evidence. In the instant case, none of the persons who prepared or issued the respective Credit Advices were presented before the Court, in violation of the hearsay evidence rule. As a consequence, these pieces of evidence cannot be given probative weight. Considering that BSP failed to present proof of prior payment, the same divests the CTA of jurisdiction to determine the merits of this case. In other words, there can be no valid claim for refund or nothing could be refunded where there is no showing of prior payment. ***(Bangko Sentral ng Pilipinas vs Commissioner of Internal Revenue, CTA Case No. 9478, September 26, 2019)***

This Court has consistently held that in order to be considered a non-resident foreign corporation doing business outside the Philippines, each entity must be supported, at the very least, by both SEC certificate of non-registration of corporation/partnership and proof of foreign incorporation/ Association/business Registration.

Taxpayer seeks for the refund of its excess and unutilized input value-added tax (VAT) attributable to its zero-rated sales for the 2nd quarter of calendar year (CY) 2014.

The CTA ruled that in order to be entitled to a refund or tax credit of input tax due or paid attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with: 1. The taxpayer-claimant must be VAT-registered; 2. There must be zero-rated or effectively zero-rated sales; 3. That input taxes were incurred or paid; 4. That such input taxes are attributable to zero-rated or effectively zero-rated sales; 5. That the input taxes were not applied against any output VAT liability during and in the succeeding quarters; and 6. The claim for refund was filed within the prescriptive period both in administrative and judicial levels.

Taxpayer has sufficiently proven its entitlement to a refund or issuance of TCC in the amount of P134,298,376.32 representing its unutilized excess input VAT for the second quarter of CY 2014 which is attributable to its zero-rated sales/receipts for the same period. ***(Vestas Services Philippines, Inc. vs Commissioner of Internal Revenue, CTA Case No. 9480, September 20, 2019)***

A Letter of Authority is invalid for having been served beyond thirty (30) days from date of its issuance.

The BIR assessed the taxpayer deficiency taxes, to which the latter protested against. The BIR denied the protest, prompting the taxpayer to file a case against the former before the CTA.

The CTA ruled in favor of the taxpayer. The Court reiterated that under Revenue Audit Memorandum Order (RAMO) No. 1-00, an LOA must be served or presented to the taxpayer within thirty (30) days from its date of issue; otherwise, it becomes null and void unless revalidated. In the present case, it appears that LOA No. eLA 201100068137/LOA-43B-2014-00000164 was issued on May 19, 2014 but was served to petitioner only on August 6, 2014. Based on the above rule, such LOA should have been served not later than June 18, 2014, the 30th day from date of its issuance. Even assuming that the above LOA is valid, still, the deficiency tax assessment should be deemed void because the revenue officers who actually conducted the audit examination of the taxpayer's books of accounts and other accounting records for taxable year 2012 have no authority to do so. The Revenue District Officer is bereft of any power to authorize the examination of taxpayers or to effect any modification or amendment to a previously issued LOA because only the CIR or his duly authorized representatives are granted such power. ***(Kokoloko Network Corporation v. Commissioner of Internal Revenue, CTA Case No. 9574, September 24, 2019)***

A taxpayer may claim exemption from estate tax of its foreign currency deposit as long as the deposit is eligible or allowed under R.A. No. 6426, as amended.

The taxpayer, as represented by its sole heir, filed a case against the BIR for refund of estate taxes paid. It alleged that it is entitled to the refund of the amount representing erroneously paid estate tax, interest, and penalties on the HSBC USD Savings Account. The BIR argued that a foreign currency deposit of a resident decedent is not among the allowable deductions from the value of the gross estate of the resident citizen under Section 86(A) of the NIRC of 1997.

The CTA ruled in favor of the taxpayer. It held that R.A. No. 6426 remains the governing law on the exemption from estate tax of foreign currency deposits. In this case, the taxpayer is an American citizen but a resident of the Philippines who left properties in the country, including the subject foreign currency deposit account with HSBC. Consequently, the taxpayer may now claim exemption from estate tax of its foreign currency deposit with HSBC as long as the deposit is eligible or allowed under R.A. No. 6426, as amended. Considering that HSBC was granted by the BSP with EFCDU Authority, the taxpayer's USD deposit with HSBC is eligible or allowed under R.A. No. 6426, as amended. Thus, its foreign currency deposit with HSBC is exempt from estate tax. ***(Estate of Mr. Charles Marvin Romig Represented by its Sole Heir, Mrs. Maricel Narciso Romig v. Commissioner of Internal Revenue, CTA Case No. 9626, September 2, 2019)***

CTA

The judicial interpretations of a statute constitute a part of the law as of the date it was originally passed. Thus, the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended), in the Filinvest case was deemed as part of the NIRC as of December 23, 1994 up to the present.

The BIR assessed the taxpayer deficiency DST, interest, and surcharge. While the protest was pending, the taxpayer voluntarily paid the same. It thereafter filed an administrative claim for refund. Due to the BIR's inaction, the taxpayer filed the present case before the CTA.

The CTA partly granted the taxpayer's petition. The application of the Filinvest case, which held that instructional letters, as well as the journal and cash vouchers evidencing the advances extended to affiliates qualified as loan agreements are subject to DST, to the present case will not constitute a violation of the principle of nonretroactivity of laws and rulings because the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended), in the Filinvest case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present.

However, the Court stated that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest. At the time the advances were made, the taxpayer relied on prevailing court decisions to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Such reliance on the said cases justifies the non-imposition of surcharge and interest. ***(Eagle II Holdco, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9637, September 10, 2019)***

Without a valid LOA from the BIR, the assessment on the taxpayer will be deemed void and shall produce no legal effect.

The BIR Revenue District Officer issued to the taxpayer a Tax Verification Notice (TVN). The Revenue Officer was also assigned therein to verify petitioner's records covering internal revenue taxes from. Despite the alleged absence of a Letter of Authority (LOA) from the CIR for Revenue Officer to examine the taxpayer's accounting books and records, the taxpayer surrendered the relevant records and documents to her. The BIR subsequently issued a FAN/FLD to the taxpayer, to which the latter protested. The instant case was thereafter filed by the taxpayer.

The CTA found that the since there was no LOA from the BIR, the subsequent assessment on the taxpayer was void and produced no legal effect. The CTA held that it cannot also rule on the taxpayer's protests, as all assessments made by the BIR after the taxpayer disclosed its books and records to the latter are equally without effect. ***(Chem Insurance Brokers & Services Corporation v. Commissioner of Internal Revenue, CTA Case No. 9656, September 9, 2019)***

CTA

An assessment arrived at resulting from the mere computation of deficiency taxes is not the decision appealable to the CTA for there is no disputed assessment yet.

The taxpayer received an electronic mail from the Revenue Officer, wherein various payment forms containing the tax deficiency assessment for various taxes were attached therein. The taxpayer paid the same under protest, and served a protest on the assessment to the BIR. Due to the BIR's inaction, the taxpayer filed a case before the CTA.

The CTA held that a cursory reading would show that the same cannot be considered as an assessment constituting a demand for payment nor a final decision of the CIR. It is a mere computation of deficiency taxes, notifying taxpayer of the amounts stated therein. There was even neither demand for payment indicated in the tenor of the electronic mail, nor in the document attached therein. The electronic mail was sent merely to inform petitioner of its liabilities and this was considered as the BIR's Notice of Informal Conference. It does not formally inform petitioner of its tax liabilities and there is no formal demand to pay the same. Thus, in the instant case, there is no disputed assessment to speak of. The document is not the assessment contemplated under Section 228 of the NIRC of 1997, as amended, that would require a protest from petitioner.

In the instant case, records reveal that at the time of the filing of the instant Petition for Review, no final assessment notice has yet been issued by the CIR. Thus, the appeal of this case over the alleged assessment is premature. This Court reiterates that the decision contemplated in R.A. 1125 is one which constitutes a final decision or inaction from a disputed assessment of the CIR. Consequently, the so-called assessment arrived at resulting from the mere computation of deficiency taxes is not the appealable decision for there is no disputed assessment yet. The taxpayer wrongly considered that the BIR has already rendered a final decision or inaction on the matter that is appealable before the CTA. ***(Axeia Development Corporation v. Commissioner of Internal Revenue, CTA Case No. 9816, September 16, 2019)***

Failure to prove that a PAN and FAN were actually issued and sent to the taxpayer, and that the same were actually received by him, there is no valid assessment which could be a valid subject of collection under a

The taxpayer filed its "Petition for Review (with Urgent Motion to Suspend the Collection of Tax)" before the CTA. The CIR failed to file his comment.

The CTA reiterated that Section 228 of the NIRC, as amended, and RR No. 12-99, as amended, particularly Section 3 thereof, prescribe the due process requirement to be observed in issuing deficiency tax assessments, such as the issuance of a Notice of Informal Conference, Preliminary Assessment Notice ("PAN"), Final Assessment Notice ("FAN") & Formal Letter of Demand ("FLD") by the BIR. Strict compliance with the due process requirement is mandatory to make the assessment valid.

In the case at bar, the taxpayer denies receipt of a PAN and FAN from the BIR and argues that such failure of to serve the PAN and FAN rendered the warrant of distraint and levy void. It is not simply a question of whether the PAN and

warrant of distraint and levy

FAN were sent to the taxpayer, but it is imperative that the taxpayer actually received said tax assessment notices. It was, however, incumbent upon the BIR to prove by preponderant evidence that the PAN and FAN were actually received by the taxpayer. Unfortunately, he failed to discharge this burden. As earlier stated, the CIR was declared in default and therefore presented no evidence to prove that a PAN and FAN were indeed sent to the taxpayer. ***(Barrio Fiesta Manufacturing Corporation v. Commissioner of Internal Revenue, CTA Case No. 9880, September 18, 2019)***

An assessment is not necessary prior to the filing of a criminal complaint.

Enviroaire, represented by its president, Tyrone Ong, and its treasurer, Arlene Chua, was charged with violation of Section 254 (attempt to evade or defeat tax) and 255 (failure to supply correct and accurate information) of the Tax Code. In its defense, Enviroaire maintained that there was no due process afforded to them as they did not receive the PAN and FAN. BIR alleged that it issued notices to the accused via registered mail, however, there was no proof that the same was received by the accused, nor the authorized representatives. Further, records show that the PAN and FLD were only issued in 2016. Therefore the accused argue that the assessment already prescribed since the Income Tax Return for 2007 was filed in 2008.

The Court ruled that an assessment is not necessary prior to the filing of a criminal complaint. To sustain conviction for an attempt to evade or defeat tax under Section 254 in relation to Sections 253(d) and 255 of the Tax Code, the following elements must be established beyond reasonable doubt: (1) There is a tax imposed on the corporation under the NIRC; (2) An attempt in any manner to evade or defeat any tax imposed under the NIRC or the payment thereof; (3) Such attempt to evade or defeat tax or the payment thereof is willful; and (4) In the case of corporations, the penalty shall be imposed on the president, general manager, branch manager, treasurer, officer-in-charge, and the employees responsible for the violation.

In finding that the accused are guilty of the offense charged, the Court ruled that there was undoubtedly a willful attempt to evade or defeat tax imposed, as contemplated in Section 254 in relation to Section 253 and 256 of the NIRC, as amended. This is so since taxpayer's sales amounting to over 200 million pesos, which were perfected and consummated in 2007, should have been declared in 2007. However, the sales consistently remain unreported for two consecutive taxable periods, resulting in the substantial under-declaration of more than 30% of sales or income. Further, the accused's under-declaration of the tax, as well as attempting to mislead the Court in the method of accounting used, show that there was an attempt to undeclare tax.

As such, the Court found Enviroaire guilty beyond reasonable doubt. Accused Tyrone Ong and Arlene Chua, being the president and secretary of Enviroaire, were likewise found to be criminally liable.

With regard to the civil aspect of the case, the same is deemed simultaneously instituted. However, the Court ruled that prosecution failed to present any evidence to prove that the assessment notices were duly served and received by accused Tyrone N. Ong and Arlene Chua. Accordingly, the absence of any proof by competent evidence of the receipt of the PAN and FAN/FLD by the taxpayer renders the assessments void. ***(People of the Philippines vs Enviroaire, Inc., represented by Tyrone N. Ong & Arlene Chua, CTA Crim. Case No O-408, September 4, 2019)***

For conviction of accused under Section 255 of the Tax Code, the prosecution must be able to prove beyond reasonable doubt that the act of accused was done wilfully; The acquittal of a taxpayer in the criminal case cannot operate to discharge him or her from the duty to pay tax.

The taxpayer was charged for violating Section 255 of the Tax Code, or the failure to supply correct and accurate information in his ITRs for taxable years 2006 to 2009, specifically in relation to payment of taxes for sale of gold with the Bangko Sentral ng Pilipinas (BSP).

The Court ruled that for conviction of criminal offense under Section 255 of the Tax Code, the prosecution must prove beyond reasonable doubt the existence of the following elements: (1) The accused is a person required under the NIRC or rules and regulations to supply correct and accurate information; (2) The accused failed to supply correct and accurate information at the time or times required by law or rules and regulations; and (3) Such failure to supply correct and accurate information is wilful.

In this case, the Court ruled that the third element was not conclusively proven. The Court found that failure of the accused to declare in his ITR his sales of gold to BSP were made in good faith and without malice considering that the accused merely relied on representations made by the BSP that his gold and silver sales transactions with them were tax-free. The accused was made to believe that there was no need to pay tax on his sale of gold, and that had he known otherwise, he would not have gone into gold transactions with the BSP. Accordingly, the Court ruled that the prosecution was not able to prove beyond reasonable doubt that the accused willfully failed to supply the correct and accurate information on his ITRs. Thus, accused was acquitted on the criminal charge.

The Court likewise ruled that the acquittal of a taxpayer in the criminal case cannot operate to discharge him from the duty to pay tax. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is it a mere civil liability derived from the crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist. However, in this case the LOA, FLD and PAN were not proven by the prosecution to have been duly received by the accused. Thus, no civil liability

was likewise imposed. *(People of the Philippines vs. Rashdi Camlian Sakaluran, CTA Crim. Case No O-411, O-412, O-413, and O-414, September 4, 2019)*

Our Take

Note: The accused likewise raised as a defense that by virtue of RA No. 11256 dated March 29, 2019, his sale of gold to the BSP is considered an exclusion in computing gross income thereby, making it no longer subject to income tax under Section 32 of the NIRC of 1997. However, considering that the period covered in this case are taxable years 2006 to 2009, the Court ruled that RA 11256 cannot be given retroactive application. Even assuming arguendo, that RA No. 11256 be given retroactive application, the implementing rules and regulations under Section 5132 thereof, still requires the registration and accreditation of small-scale miners and traders in order to avail the tax exemption under the law.

The invalidity of the assessment negates the element that the failure to pay taxes was willful.

Here, the taxpayer was charged for violating Section 255 of the tax code or the failure to pay, withhold and/or remit to deficiency income tax, value-added tax, and expanded withholding tax, all for taxable year 2007.

The Court ruled that the prosecution must prove beyond reasonable doubt the existence of the following elements before a taxpayer can be held liable under Section 255 of the tax code: (1) The offender is required under the 1997 NIRC, as amended, or by rules and regulations promulgated thereunder to pay any tax, make a return, keep any record, or supply correct and accurate information; (2) The offender fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations; and (3) Such failure was willful. In acquitting the accused, the Court ruled that the prosecution failed to prove elements 2 and 3. Element no. 2 is undoubtedly replete with inaccuracies, devoid of empirical evidence. In the Information, it was stated that the accused is liable for the alleged deficiency VAT but the prosecution failed to present the VAT Registration of the accused. Further, the PAN, FAN, and FLD issued by the BIR to the accused assessed the latter of deficiency percentage tax instead of VAT. Also, accused was assessed for expanded withholding tax, however, the prosecution failed to adduce evidence if indeed the accused is actually the withholding agent for the alleged EWT.

As to the third element, the prosecution failed to prove the validity of the deficiency tax assessments by failing to rebut the denial of the accused that the LOA, PAN, FAN, and FLD were duly served. Thus, the invalidity of said assessments has further cast doubt to the liability of the accused for such deficiency tax assessments as charged in the Information. ***(People of the Philippines vs. Rosalinda Valisno Cando, Owner of Gasat Express Quirino Hi-***

way, Sto. Cristo, San Jose Del Monte, Bulacan, CTA Crim. Case No O-634, September 11, 2019)

Out Take

NOTE: In the Environaire case, the Court ruled that that an assessment is not necessary prior to the filing of a criminal complaint. However, the Court found that there was a willful attempt to evade or defeat tax imposed since the non-declaration of the accused on his sales resulted to the substantial under-declaration of more than 30% of sales or income. Thus, the Court found the accused guilty. In the Cando case, the Court did not find that the failure to pay tax was willful, as discussed above.

Only offshore income and gross onshore interest income of an FGU are exempt from taxes

United Coconut Planters Bank (UCPB) filed a Petition for Review assailing the decision of the Court in Division, which partially sustained the assessment for deficiency income tax and gross receipts tax on UCPB's earnings of its Foreign Currency Deposit Unit (FCDU) for the year 2006. UCPB submits that with respect to gross onshore income, other than interest income from foreign currency loan transactions of FCDUs with residents, the exemption from all taxes covers not only service fees and commissions but also any and all other charges imposed on foreign currency loan transactions of FCDUs. Thus, all of UCPB's other income as an FCDU not expressly subject to tax, are exempt from tax and from the 35% regular corporate income tax (RCIT).

The Court ruled that while the legal issue of whether Section 27 of the NIRC provides a tax exemption for income derived by a depositary bank for the specific variety of income referred to therein has been settled, it is still incumbent upon UCPB to prove that the income for which it seeks exemption falls under this category. UCPB's assertion that based on the exemption under existing law, all the income under its FCDU, without qualification, is exempt from all taxes is certainly misplaced. Only offshore income and gross onshore interest income, as well as fees, commissions and other charges integral thereto, are exempt from taxes, the rest is subject to RCIT. ***(United Coconut Planters Bank vs. Commissioner of Internal Revenue, CTA EB No 1790 and 1792 (CTA Case No. 8963), September 3, 2019)***

Ratification retroacts to the date of the subject of such act.

The CIR filed a Petition for Review on the Order of the Court in Division granting the claim for refund of taxpayer. The CIR argues that the taxpayer's Petition for Review filed on December 19, 2014 in the Court in Division lacks a proper verification and certification against forum shopping since the signatory, Atty. Editha Hechanova, was not authorized to sign the same in the SPA dated May 10, 2012 and the alleged ratification of said SPA under Certification/SPA dated February 23, 2015 does not exist as there was no authority to ratify, hence, no

valid petition was filed upon the expiration of the two-year prescription period to claim for refund.

The Court ruled that act of taxpayer's board through its Chairman issuing an SPA confirming and certifying that said law firm was appointed as its attorney-in-fact and stated categorically that Atty. Hechanova was among taxpayer's attorneys-in-fact is considered ratification. Furthermore, in Lopez Realty, Inc., et al. v. Spouses Reynaldo Tanjangco and Maria Luisa ArguellesTanjangco, the Supreme Court explains the nature of such ratification and ruled that it retroacts to the date of the subject of such act. Thus, the Court in Division did not err in allowing Atty. Hechanova as signatory in the subject verification and certification against forum shopping. ***(Commissioner of Internal Revenue vs. Sartorious Aketiengesellschaft, CTA EB No 1858 (CTA Case No. 8951), September 16, 2019)***

The determination of the type of documents needed to support the protest rests solely on the taxpayer

The CIR filed a Petition for Review on the Order of the Court in Division cancelling and withdrawing the assessment of deficiency taxes of the taxpayer. The CIR argues that the subject assessment has become final, executory and demandable for failure of the taxpayer to submit the supporting documents within the sixty-day period from the filing of its protest. Thus, the Court allegedly has no jurisdiction over the case.

The Court ruled that the determination of the type of documents needed to support the protest rests solely on the taxpayer, and the BIR cannot demand what type of supporting documents should be submitted. More importantly, the High Court recognized that "attaching" supporting documents to the protest constitutes, in effect, the "submission" of the same as of the filing of the said protest. A perusal of the Protest/Request for Reconsideration filed shows that taxpayer attached supporting documents thereto. Thus, it also cannot be said that taxpayer failed to submit relevant supporting documents that would render the subject tax assessments final. Consequently, the Court in Division had jurisdiction over the case a quo. ***(Commissioner of Internal Revenue vs. Bisazza Philippines, Inc., CTA EB No 1870 (CTA Case No. 9372), September 02, 2019)***

The withholding agent only needs to prove the fact of withholding and not the actual remittance to the BIR of the taxes withheld.

The CIR filed a Petition for Review on the Order of the Court in Division granting the claim for refund of the taxpayer. The CIR maintains that the taxpayer is not entitled to its claim for refund of alleged erroneously paid Final Withholding Taxes (FWT) for taxable years 2012 and 2013 because the taxpayer fails to prove the fact of remittance of the taxes withheld to the BIR. The BIR further argues that the testimonies of the various payors and withholding agents are required to prove remittance, which the taxpayer failed to do.

The sale of services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise operating within the ECOZONE is still subject to VAT at zero percent (0%) rate, despite the consumption being outside the ECOZONE.

This is a Motion for Reconsideration for a claim of refund filed by the taxpayer for unutilized input VAT attributable to zero rated sales. Taxpayer hinges its claim for refund on the fact that the sale of goods and services by a VAT-registered entity to a PEZA-registered entity which are consumed, used, or rendered within the customs territory should be subject to twelve percent (12%) VAT. However, the Court En Banc ruled that the sale of services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise operating within the ECOZONE is still subject to VAT at zero percent (0%) rate, despite the consumption being outside the ECOZONE.

As such, the proper party that Coral Bay should seek reimbursement is against the supplier.

DISSENTING opinion:

Justice Ringpis-Liban dissented on the wholesale denial of the claim for refund. Applying the cross-border doctrine and the destination principle for VAT, the sale of goods and services made by a VAT-registered enterprise from the customs territory to a PEZA-registered enterprise, which are consumed, used or rendered outside the ecozone (i.e., within the customs territory) is subject to twelve percent (12%) VAT. As such, the input VAT thereon is valid and a refund can be claimed. ***(Coral Bay Nickel Corporation v. Commissioner of Internal Revenue, CTA EB Case No. 1909 and 1910)***

A prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties.

This was a Petition for Review filed by the Commissioner of Internal Review contesting the refund granted to the taxpayer. The BIR based its contention on the fact that the taxpayer did not comply with Revenue Memorandum Order 1-2000 and 72-2010.

The Court En Banc denied the Petition. Citing Supreme Court cases (Deutsche Bank AG Manila Branch v. CIR and CBK Power Company Limited v. CIR), the Corut held that a prior application for tax treaty relief is not required before a taxpayer can avail of the preferential tax treatment under the various Philippine tax treaties. ***(Commissioner of Internal Revenue v. DGA Ilijan B.V., CTA EB No. 2008, CTA Case No. 8911, September 2, 2019)***

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